

Shiv Kirpal Singh vs Shri V. V. Giri on 14 September, 1970

Equivalent citations: 1970 AIR 2097, 1971 SCR (2) 197, AIR 1970 SUPREME COURT 2097

Author: S.M. Sikri

Bench: S.M. Sikri, J.M. Shelat, Vishishtha Bhargava, G.K. Mitter, C.A. Vaidyalingam

PETITIONER:
SHIV KIRPAL SINGH

Vs.

RESPONDENT:
SHRI V. V. GIRI

DATE OF JUDGMENT:
14/09/1970

BENCH:
SIKRI, S.M.
BENCH:
SIKRI, S.M.
SHELAT, J.M.
BHARGAVA, VISHISHTHA
MITTER, G.K.
VAIDYIALINGAM, C.A.

CITATION:
1970 AIR 2097 1971 SCR (2) 197
1970 SCC (2) 567
CITATOR INFO :
E 1973 SC 38 (13)
RF 1984 SC 309 (37)
R 1986 SC1323 (32)
R 1987 SC1577 (25)

ACT:
Presidential and Vice-Presidential Election Act 31 of 1952--Part 111 of Act whether ultra vires Art. 71(1) of Constitution of India 1950 Election of President whether can be challenged on grounds other than those mentioned in s. 18-Validity of s. 5(2)Section whether ultra vires Art. 58 of Constitution-Candidate signing his nomination paper before proposer or seconder-Nomination paper whether liable to be rejected Validity of s. 21-Whether section suffers from vice of excessive delegation of legislative power-

'Undue influence' in s. 18 meaning of-Statements within purview of s. 171 G of Indian Penal Code whether can also fall under s. 171C-Connivance by candidate of exercise of undue influence by others, proof-Material effect on election, proof-Bribery, evidence of.

Costs-Election Petition-When costs may be refused.

Presidential and Vice-Presidential Election Rules, 1952-Validity of Rules 4(1) and 4(2)-Requirement that nomination paper must be accompanied by certified copy of entry in electoral roll relating to candidate, whether arbitrary and unreasonable and ultra vires s. 21 of Act 31 of 1952 -Validity of rr. 4(3) and 6(3)-Requirement that elector shall not subscribe whether as proposer or seconder more than one nomination paper at any election, whether contravenes s. 5(2) of Act 31 of 1952 Certified copy of electoral roll entry relating to candidate-Who can issue.

Constitution of India, 1950, Art. 58-Age of candidate for office of President of India-Minimum age prescribed as 35 years-Entry in electoral roll showing candidate's age as above 35 years-Candidate's own statement as to date of birth showing he is below 35 years-Rejection of nomination paper whether justified.

Constitution, of India, 1950, Arts. 54, 367, 372 and 372-A-General Clauses Act, s. 3(58)-Union Territory whether 'State' within meaning of Art. 54-Elected members of Legislatures of Union Territories whether must be included in Electoral College for election to office of President of India.

HEADNOTE:

The election to the office of President of India held in August 1969 was challenged in five election petitions filed in this Court. The main question that 'fell for consideration was whether the distribution of an anonymous pamphlet making defamatory statements about one of the candidates at the election, in the manner alleged by the petitioners, amounted to exercise of undue influence within the meaning of s. 18 of the Presidential and Vice-Presidential Election Act 31 of 1952 read with s. 171 C of the Indian Penal Code. In this connection the Court had further to decide whether the pamphlet was published and distributed by the winning candidate or with his connivance, by his supporters, and whether the result of the election was materially affected by the publication and distribution of the pamphlet in question. The other questions of law at fell for consideration were (1) whether Part III of Act 31 of 1952 had

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the effect of curtailing the jurisdiction of this Court under Art. 71(1) of the Constitution and was therefore ultra vires, (ii) whether an election under the Act could be

challenged on grounds other than those mentioned in s. 18 of Act 31 of 1952 which fell in Part III thereof; (iii) whether s. 21 of the Act was void because of excessive delegation of legislative power; (iv) whether r. 4(1) was ultra vires s. 21 and also void because it was arbitrary and unreasonable; consequently whether r.4(2) was void; (v) whether the prohibition in r. 4(3) on an elector proposing or seconding more than one candidate was ultra vires s. 5(2) of Act 31 of 1952; consequently whether s. 6(3) was void; (vi) whether nomination paper of one of the candidates was rightly rejected when the electoral roll showed the candidate's age as above 35 years but the candidate's own statement as to his date of birth showed that he was below 35 years; (vii) whether certified copy of entry in electoral roll relating to candidate must under the Rules be issued either by the Electoral Registration Officer or the Assistant Electoral Registration Officer; (viii) whether a nomination paper signed first by the candidate and thereafter by his proposer and seconder could be treated as valid; (ix) whether the elected representatives of the Legislatures of Union Territories are entitled to be included in the Electoral College for the election of President of India on the footing that the word 'State' includes 'Union Territories'; (x) whether s. 5(2) of Act 31 of 1952 is ultra vires Art, 58 of the Constitution; (xi) whether the offence of 'bribery' as alleged by the petitioners was shown to have been committed and (xii) whether in the circumstances of the case costs should be awarded to the winning party. Dismissing the petitions, HELD: (A) Per Sikri, Shelat and Vaidialingam, JJ. (Bhargava and Mittee, JJ. dissenting) : (a) Though undue influence for purpose of s. 123 the Representation of the People Act, 1951 has the same meaning as in the present Act that section does not go as far as s. 18 of the present Act so as to provide that even if it is committed by a third party that is to say not an election agent nor a person with the consent of the returned candidate, the election would still be declared to be void provided it has been materially affected by such undue influence. From the fact that both these Acts were enacted by the same legislature and Act 31 of 1952 was passed after the Representation of the People Act was passed, it is clear that Parliament deliberately made s. 18 stricter than the Representation of the People Act, firstly, by using the word "his consent" and secondly, by including undue influence committed even by a stranger having nothing to do with returned candidate as a ground for declaring the election to be void, the only condition in respect of such an Act being that it should have materially affected the election. The object of doing so is obvious. namely, that Parliament wanted to ensure that in respect of an election for the highest office in the realm the election should be completely free from any improper influence emanating even from a third party with whom the returned

candidate had no connection and without any connivance on his part. The only limitation placed in s. 18 is that in such a case It has to be established that the election was materially affected The questions, therefore, which would arise under s. 18 would be: (1) Has the offence of undue influence been committed ? (2) If so, was it committed by the returned candidate or by a person with his connivance ? and (3) Even if the offence was committed by a stranger and without the connivance of the returned candidate, has the committal of that offence by such "any person" materially affected the election? [222 E-223B]

The argument that s. 171 C of the Indian Penal Code does not apply to the first stage when the elector goes through the mental process of weighing merits and demerits of the candidates but only to the second stage when having made his choice he goes to cast his vote in favour of

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the candidate of his choice, cannot be accepted. The argument completely disregards the structure and provisions of s. 171C. The section is enacted in three parts. The first stage contains the definition of undue influence. This is in wide terms and renders a person voluntarily interfering or attempting to interfere with the free exercise of any electoral right guilty of committing undue influence. That this is very wide is indicated by the opening sentence of sub-s. (2) that is, "without prejudice to the generality of the provisions of sub-s. (1)". It is well settled that when it,, expression is used anything contained in the provisions following this expression is not intended to cut down the generality of the meaning of the preceding provision. [224 G-225 B]

Kings emperor v. Sibnath Banerji [1945] F.C.R. 195, referred to.

It follows that sub-s. (1) has to be looked at as it is without restricting its provisions by what is contained in sub-s. (2). Sub-s. (3) throws a great deal of light on this question. It proceeds on the assumption that a declaration of public policy or a promise of public action or the mere exercise of a legal right can interfere with an electoral right, and therefore it provides that if there is no intention to interfere with the electoral right it shall not be deemed to be interference within the meaning of this section. Such a declaration of public policy or the promise of public action can only act and tend to interfere at the stage when a voter is trying to make up his mind as to which candidate he would support. [225 B-D]

Sub-s. (3) further proceeds on the basis that the expression "free exercise of the electoral right" does not mean that a voter is not to be influenced. This expression has to be read in the context of an election in a democratic society and the candidates and their supporters must naturally be allowed to canvass support by all legal and legitimate means. This exercise of the right by a candidate or his

supporters to canvass support does not interfere or attempt to interfere with the free exercise of the electoral right. What does however attempt to interfere with the exercise of an electoral right is "tyranny over the mind". If the contention of the respondent was to be accepted it would be quite legitimate on the part of the candidate or his supporters to hypnotise a voter and then send him to vote. At the stage of casting his ballot paper there would be no pressure cast on him because his mind has already been made up for him by the hypnotiser.[225-E-G]

From a reading of s. 171G it is clear that in pursuit of purity of elections the legislature frowned upon attempts to assail such purity by means of false statements relevant to the personal character and conduct of the candidate and made such acts punishable thereunder. But the fact that making of such a false statement is a distinct offence under s. 171G does not and cannot mean that it cannot take the graver form of undue influence punishable under s. 171F. The false statement may be of such virulent, vulgar or scurrilous character that it would either deter or tend to deter voters from supporting that candidate whom they would have supported in the free exercise of their electoral right but for their being affected or attempted to be affected by the maker or the publisher of such a statement. Therefore, it is the degree of gravity of the allegation which will be the determining factor in deciding whether it falls under s. 171C or s. 171G. If the allegation, though false and relating to a candidate's personal character or conduct, made with the intent to affect the result of an election, does not amount to interference or attempt at such interference, the offence would be the lesser one. If, on the other hand, it amounts to interference or an attempt to interfere it would be the graver offence under s. 171F read with s. 171C. [225 D-G]

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The above view is supported by the statement of objects and reasons attached to the bill which ultimately resulted in the enactment of Ch. IXA of the Indian Penal Code, and by a number of decisions given on similar statutory provisions. [226 B-H]

Amritsar City (Mohammadan) Constituency Case No. 2-The Indian Election Cases (1935-50) Dobia Vol. 11, 150-157; Jujhar Singh v. Bhairon Lal 7 E.L.R. 457, 461; Radhakanta Mishra v. Nityanand Mahapatra, 19 E.L.R. 203, and Baburao Patel v. Dr. Zakir Husain, [1968] 2 S.C.R. 133, 145. referred to.

(b) On the evidence in the case it must be held that the pamphlet in question was distributed by post and in the Central Hall of Parliament by some members of Parliament and there was wide discussion about it in the Central Hall. The allegations in the pamphlet, made against one of the losing candidates were covered under s. 171C I.P.C. even if they may be covered under s. 171G. [231 F; 257 B]

The argument that the pamphlet could not come under s. 171C because it was anonymously distributed was fallacious. A series of anonymous attempts in a country like ours would have as much if not more, effect as one open powerful attempt. It would be dangerous to provide a sanctuary for anonymous attempts. Moreover, when members of Parliament distribute a pamphlet in the Central Hall it has the same effect as if they had endorsed the pamphlet in writing. [231 H]

Accordingly it must be held that the distribution of the pamphlet by post as also distribution in the Central Hall constituted an attempt to interfere with the free exercise of the right of vote-within S. 18 of the Act. [232 C]

(c) There was however no evidence to show that the respondent had any connection with the pamphlet or with its distribution. Nor was there any evidence to show that anyone connected with the distribution either through the post or in the Central Hall had any contact with the respondent, or that he distributed it with his knowledge or connivance. [257 D-E]

(d) It is well settled that the burden of proving that the result of the election has been materially affected is on the petitioners. As held by this Court in *Samant N. Balkrishna v. George Fernandes*, the matter cannot be decided on possibility or reasonable judicial guess. There was no justification for over-ruling that decision. [265 D-266 C]

Vashist Narain v. Dev Chandra, [1955] 1 S.C.R. 509, *Mahadeo v. Babu Udai Pratap Singh*, A.I.R. 1966 S.C. 824, *Paokai Haikip v. Rishang C.A.* No. 683/1958 dt. 12-8-1968, *G.K. Samal v. R. V. Rao*, C.A. No. 1540/69 dt. 20-1-1970, *Surendra Nath Khosla v. Dalip Singh*, [1957] S.C.R. 179, relied on. *Samant N. Balkrishna v. George Fernandes*, A.I.R. 1969 S.C. 1201, reaffirmed.

On the evidence in the present case it was difficult to hold that the petitioners had proved that the publication and distribution of the pamphlet materially affected the result of the election. It only leads to the conclusion that it probably did have some effect but the vast majority of the electors were able to throw off the effect of the pamphlet and vote according to their own personal wish or according to the mandate of their party. [269 B-C]

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Per Bhargava, J. : Sub-section (1) of s. 171C in general terms makes any act an 'undue influence' if it interferes or attempts to interfere with the free exercise of any electoral right and if it is committed voluntarily. The electoral right according to the definition in s. 171A(b) is the right of a voter to vote or refrain from voting. Undue influence can be held to be committed if the person charged with the offence interferes or attempts to interfere with the free exercise of this right of voting or refraining from voting. When an elector exercises the right of voting it can be envisaged that he goes through the mental process of

first taking a decision that he will vote in favour of a particular candidate and thereafter, having made up his mind, he has to go and exercise that electoral right by casting the vote in favour of the candidate chosen by him. The language used in s. 171C indicates that the offence of undue influence comes in at the second stage when the offender interferes or attempt-, to interfere with the free exercise of that choice of voting in accordance with the decision already taken by the voter. It, therefore, follows that if any acts are done which merely influence the voter in making his choice between one candidate or another, they will not amount to interference with the free exercise of the electoral right. In fact all canvassing that is carried on and which is considered legitimate is intended to influence the choice of a voter at the first stage and that is quite permissible. Once the choice has been made by the voter, there should be no interference with the free exercise by him of that choice by actually casting the vote, or in the alternative there may be cases where a voter may decide that he will not vote for any candidate at all but some acts are done which compel him to cast his vote. It is in such cases that the offence of undue influence will be held to have been committed.

The language used in the definition of undue influence implies that an offence of undue influence will be held to have been committed if the elector having made up his mind to cast a vote for a particular candidate does not do so because 'of the act of the offender, and this can only be if he is under the threat or fear of some adverse consequence. Whenever any threat of adverse consequences is given it will tend to divert the elector from freely exercising his electoral right by voting for the candidate chosen by him for the purpose. In a case where the voter is threatened with an injury as defined in the Indian Penal Code, it has to be deemed under s. 171C (2) (a) that it interferes with the free exercise of the electoral right of the voter and the same applies if the elector is induced or attempt is made to induce him to believe that he or any person in whom he is interested will become or will be rendered an object of divine displeasure or of spiritual censure. There can, however, be cases where the threat may not be of an injury as defined in s. 44 I.P.C., where the harm caused must be illegal. [320 H-321 C]

Mere propaganda against a candidate cannot be held to be exercise of undue influence. The word free is used in s. 171C I.P.C. as qualifying 'exercise' and not as 'qualifying' the word 'vote'. If undue influence had been interference with the exercise of free vote, possibly the definition could have been construed as indicating that influence brought on the mind of a voter so as to change the manner of his voting by affecting his choice and judgment in selecting the candidate for whom he is going to cast his vote would be comprised within undue influence. The word free having been

used as qualifying the word 'exercise' gives the indication that the freedom envisaged is to cast the vote in accordance with the choice already arrived at and. if such freedom of casting the vote in that manner is interfered with the offence of undue influence will be held to have been committed.

[322 A-C]

The subject of influence at the stage of making a choice was dealt with

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in Ch. IXA of the Indian Penal Code under a separate and distinct provision which is contained in s. 171G. This section clearly recognises, that, at elections, there is bound to be propaganda in which candidates or their supporters may be issuing statements so as to influence the voters against their rival candidates, and it limits the prohibition by law to only those statements of fact which are false, or believed to be false, or believed not to be true, in relation to the personal character or conduct of any candidate. These false statements about the personal character and conduct of the candidate may of course be scurrilous and foul, but even then, the offence committed would fall under s. 171G I.P.C. which makes the offence punishable with the fine only. On, the other hand, an offence of undue influence as defined in s. 171C I.P.C. has been made punishable under s. 171F I.P.C. with imprisonment of either description for a term which may extend to one year or with fine, or with both. If it is held that false propaganda against personal character or conduct of a candidate can amount to undue influence the person indulging in that propaganda would become liable to punishment under s. 171F I.P.C. which has been considered a more serious offence by being made punishable with imprisonment in addition to, or, in the alternative with fine. This interpretation would thus make S. 171G I.P.C., totally ineffective and otiose. If the false statements as to personal character or conduct are held to be punishable under s. 171F as constituting the offence of undue influence, there would be no point in prosecuting the same person for the less serious offence under s. 171G. [323 C-324 A]

In the Representation of the People Act, 1951 also, undue influence is defined in almost the same language as that contained in s. 171C I.P.C. In that Act an election can be declared void not only on the ground of commission of the corrupt practice of undue influence, but also on the ground of publication of false propaganda as to the personal character or conduct of a candidate. Parliament, however, chose not to include any such provision in Act 31 of 1952 which was passed when the Representation of the People Act, 1951 had already been enacted and enforced. The omission may be deliberate or accidental but, in either case, it is not for the court to attempt to fill up this gap by

enlarging the meaning to be given to the expression 'undue influence, which is the corrupt practice included in the Act as a ground for setting aside the election. It is clear from the scheme of Ch. IXA of the Indian Penal Code that false propaganda as to the personal character and conduct of a candidate was created as a separate offence and the definition given in s. 171C of undue influence was not intended to lay down that such propaganda will amount to interference with the free exercise of electoral right so as to constitute undue influence. [324 F-325 A]

Case law referred to.

(b) In the present case the contents of the pamphlet in question did not contain any threat of a nature which would constitute undue influence as explained above. But even on the assumption that the publication of this pamphlet could constitute undue influence the election of the respondent was not liable to be set aside because it had not been proved that the distribution by post or in the Central Hall of Parliament was with connivance of the respondent or had materially affected the result of the election. [337 B-F]

Per Mitter, J.-The only difference between the Act of 1951 and the Act of 1952 lies in the fact that under the latter Act corrupt practice of bribery and undue influence by one who was not a party to the election or his agent are also brought in. But the nature and character of undue influence under both the Acts remains the same. There is no reason for taking the view that what would not be undue influence under the Act of 1951 can become one under the Act of 1952. [354 F-G]

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If publication of any defamatory matter relating to a candidate was to, be treated as a direct or indirect interference or an attempt to interference with the exercise of any electoral right-under the wide words of s. 171C(1), there would have been no occasion for the legislature to provide for it separately under s. 123(4) of the Act of 1951. The same position would obtain under the Act of 1952, and before any publication of defamatory matter relating to a candidate can be treated as commission of the offence of undue influence there must be some overt act in addition to the mere publication, some attempt or persuasion of a voter to restrain the free choice of a candidate before, the law of undue influence is excited. [354H-355B]

The decided cases are sufficient to reject the respondent's contention that in order to establish undue influence it must be shown that there was some threat to a voter or at least an element of compulsion in the appeal to him. The cases also show that it would be futile to attempt to lay down a simple test applicable to all sets of facts and circumstances where undue influence is alleged to have been exercised. It can however be said that an attempt on the part of anybody to deflect a voter's will away from a particular candidate by creating prejudice against or hatred for

him, as for instance by casting false aspersions on his personal conduct and character whether by spoken words or in writing may be sufficient for the purpose of establishing the commission of undue influence., Much would however depend on the nature of the attempt, the position of the person making it, and the manner in which it is made. The mere publication by postal despatch of an anonymous but scurrilous pamphlet relating to the personal character of a candidate to voters all and sundry might attract the operation of s. 171G of the Indian Penal Code but would fall short of s. 171C. But if such a pamphlet is pressed upon voters and methods of inducement applied to them, specially by others who are equally interested in the election, different considerations may well arise. In such a case a court of law may legitimately hold that the disseminators of the pamphlet were attempting to canalise or force the will of others away from the person whose character was assailed. [263 B-F]

Case-law referred to.

(b) There can be no doubt that a charge of undue influence is in the nature of a criminal charge and must be proved by cogent and reliable evidence not on the mere ground of balance of probability but on reasonable certainty that the persons charged therewith have committed the offence, on the strength of evidence which leaves no scope for doubt as to whether they had done so. Although there are inherent differences between the trial of an election petition and that of a criminal charge in the matter of investigation, the vital point of identity for the two trials is that the court must be able to come to the conclusion beyond any reasonable doubt as to the commission of the corrupt practice. However onerous the task of the court may be because of the partisan nature of the witnesses it cannot reject the oral evidence adduced merely on that ground, but it has to examine the same carefully and come to a conclusion whether the evidence establishes the corrupt practice beyond reasonable doubt. Even in a criminal trial the court can hold a person guilty of a crime on the strength of evidence of partisan witnesses if they are found to be reliable although there may be no independent corroboration thereof and there is no reason to depart from that principle in the trial of an election petition where charges of offences culpable under the Indian Penal Code are levelled. [366 F-367 G]

Case-law referred to.

(b) In the present case although the pamphlet in question was defamatory, the evidence fell short of any personal appeal through the means of the pamphlet and it could not be held that the offence of undue influence

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distribution may attract culpability under s. 171G of the Indian Penal Code but would not per se attract s. 171C. [380 D]

(b) Per Bhargava, J. (Sikri, Shelat, Mitter and Vaidialingam, JJ. concurring) :

The contention that Part III of the Act is ultra vires Art. 71 (1) of the Constitution on the ground that it purports to curtail the jurisdiction conferred on the Supreme Court to enquire into and decide all doubts and disputes arising out of or in connection with the election of a President or Vice-President by laying down certain limitations such as the grounds on which only the election of a President may be challenged in an election petition, cannot be accepted. A similar contention was rejected by this Court in Dr. N. B. Khare's case. Even if it is accepted that Art.- 71(1) lays down the jurisdiction of the Supreme Court, the manner in which that jurisdiction is to be exercised can only be regulated by an Act of Parliament passed in exercise of its power under Art. 71(3). In exercise of the power to regulate all matters relating to or connected with the election of a President or Vice-President, Parliament clearly had the power of laying down the grounds on which the election can be challenged and set aside, in addition to other matters relating to the election. [295 B-297 B]

Dr. N. B. Khare v. Election Commission of India, [1958] S.C.R. 648, applied.

The fact that Art. 71(1) does not contain a provision corresponding to that in Art. 329(b) which specifically mentions a law made for calling in question an election by an election petition, could not lead to an inference in support of the petitioner's argument. Article 329(b) is a provision which lays down a limitation on the manner in which an election can be called in question, while the procedure for calling in question the election, as well as the grounds on which the election can be called in question, can only be laid down by Parliament by a law passed under Art. 327. In the case of Art. 71, it appears that no need was felt of making a provision similar to Art. 329(b) when Mt. 71(1) itself laid down the limitation that all doubts and disputes arising out of or in connection with the election of a President or Vice-President are to be inquired into and decided by the Supreme Court whose decision shall be final. [297 C-G]

(ii) On the above finding that Part III is not ultra vires, the contention that the petitioners were entitled to challenge the election on grounds other than those mentioned in s. 18 of the Act, must also fail. 1315 HI

(iii) The power of making rules conferred on the Central Government by s. 21 of the Act is subject to two principles of guidance. One is that the rules are to be made after consulting the Election Commission, and the second is that the Rules must be such as are needed for carrying out the purposes of the Act. Such power being already limited by the purposes of the Act cannot be held to be unguided or even arbitrary, even though Parliament did not choose to lay down the requirement that the Rules framed must be laid on

the table of the two Houses of Parliament and should be subject to modification or annulment within a specific period. in fact, Parliament all the time has power of altering the Rules by amending the Act itself in case it disapproves any of the Rules made by the Government, while any Rule, which is shown to have been made in contravention of the provisions of the Act, would be declared void by the Court not on the ground that there was excessive delegation of legislative power, but that it goes beyond the scope of the power conferred

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on the Government under s. 21 of the Act. Section 21 of the Act cannot therefore be held to be void on any ground. [298 B-G]

(iv) The contention that r. 4(1) of the Presidential & Vice-Presidential Rules 1952 is beyond the rule making power of the Government under s. 21 of the Act 31 of 1952 has no force. Clause (d) of subs. (2) of s. 21 lays down that the Rules made under that section may, in particular, and without prejudice to the generality of the power granted under sub-s. (1), provide for the form and manner in which nominations may be made and the procedure to be followed in respect of the presentation of nomination papers; and the requirement that a certified copy of the entry showing that the candidate being nominated is an elector for a Parliamentary constituency which alone makes him eligible to stand as a candidate for the office of President or Vice-President must accompany the nomination paper falls squarely within this clause. This requirement relates to the manner of proving that the candidate is an elector in a Parliamentary constituency. In any case, this provision in r. 4(1) would be fully covered by s. 21(1) of the Act inasmuch as the requirement is for no other purpose except of ensuring a smooth and proper election to the office of President or Vice-President which object can be achieved by enabling the Returning Officer to ensure that candidates, whose nominations are accepted by him, are eligible for election. [299 C-F]

Ranjit Singh v. Pritam Singh & Ors. [1966] 3 S.C.R. 543 applied.

The election to the office of a President or Vice-President may not coincide with or be very close to the time when there is general revision of the electoral rolls, so that the electoral roll printed or published nearabout the time of general election,, may be out of date by the time the election for the office of a President or Vice-President is held. The publishes electoral roll may therefore be misleading if it is allowed to be filed before the Returning Officer to show eligibility in the case of a Presidential or Vice-Presidential election. That seems to be the reason why r. 4(1) lays down that a certified copy of the entry alone will be the proper manner of satisfying the Returning Officer of the eligibility of the candidate. The rule is

therefore neither arbitrary nor unreasonable.

Accordingly r. 4(1) must be held to be valid. Rule 4(2) which prescribes the consequence for non-compliance with the requirement of r. 4(1) must also be held to be valid as it is intended merely to make the valid r. 4(1) effective. [301 F]

(v) The submission that s. 5(2) should be read as conferring any right either on the candidate or on the electors in respect of signing of nomination papers cannot be accepted. Had there been an intention to confer a right on any of them the language would have been different giving such indication by laying down what the candidate and the electors are entitled to do in respect of a nomination paper. Obviously, s. 5 only lays down the essential ingredients of the process of nomination, leaving the details of the manner of nomination to be filled up by Rules made by the Government under s. 21 of the Act. Rule 4(3) which requires that no elector shall subscribe whether as proposer or seconder, more than one nomination paper at any election, is thus, supplementary to s. 5(2) as containing a more detailed direction in respect of filing of nomination papers. [302 D-303A]

The fact that there is no ban in s. 5(2) of the Act on an elector signing more than one nomination paper as a proposer or a seconder does not, therefore, mean that r. 4(3) of the Rules could not have been

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competently made by the Government Rule 4(3) on the face of it contains a very reasonable direction. If there is only one vacancy for which election is to be held, an elector can reasonably be expected to nominate only one candidate as proposer and put him forward before the other electors as a suitable person to be chosen. Similarly, when seconding a nomination paper, an elector indicates his preference for that candidate to the general electorate which is to cast votes at the election. If the indication of such choice is restricted to as many candidates as there are vacancies, the provision is, on the face of it salutary and conducive to proper election. [303 H-304 B]

The historical background of the Rules relating to elections in India also bears out that such a provision has always been considered desirable. A similar provision exists in the Rules governing elections in England. [304 C-305 D]

In the circumstances it must be held that r. 4(3) of the Rules was validly made by the Government in exercise of its rule making power under s. 21 of the Act; that Rule being valid r. 6(3) (c) of the Rules which is consequential, must also be held to be valid. [305 H]

Amolak Chand v. Raghuvir Singh, [1968] 3 S.C.R. 246, referred to.

(vi) The entry in the electoral roll showing a candidate as being above 35 years of age has little value when the candidate's own statement to the Returning Officer as to his

date of birth shows that he is below 35 years of age. [306 E-F]

(vii) There is nothing in the Rules framed under the Act or under the Representation of the People Act, 1950 and Rules framed thereunder, requiring that a certified copy of the electoral roll must necessarily be issued by either an Electoral Registration Officer or an Assistant Electoral Registration Officer. Every government servant, who has custody of a document, is competent to issue certified copies of that document. [308 B]

(viii) When the Act was enacted in 1952, the law in India, as administered by various Election Tribunals, was clear that the order in which signatures are made on a nomination paper by the candidate the proposer and the seconder is immaterial and no nomination paper would be invalid if the signatures are made by the candidate before the pro-Act must be presumed to know that this was the law as interpreted in India and consequently, when the language incorporated in s. 5(2) of the Act was used, it must have been intended that nomination papers would not be invalid by reason of the candidate making his signature before the proposer and the seconder. [312 C-E]

Therefore, in the present case, the nomination papers of the candidate who signed his nomination paper before the proposer and the seconder as well as those of the candidate who signed his nomination paper before his seconder, were rightly accepted, [312 F]

Case-law referred to.

(ix) The argument that the definition of 'State' in s. 3(58) of the General Clauses Act includes Union Territories and therefore the elected members of the Legislative Assemblies of the Union Territories are also to be included in the Electoral College, must be rejected. [313 D-E]

It is true that under Art. 367, the General Clause,; Act applies for interpretation of the Constitution as it applies for the interpretation of ,in Act of the Legislature of the Dominion of India but that Act has been applied as it stood on 26th January, 1950 when the Constitution

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came into force subject only to any adaptations and modifications that may be made therein under Art. 372. The General Clauses Act as it was defined State so as to include a Union Territory. This was done by Art. 372 A which was introduced by the Constitution 7th Amendment Act, 1956. The new definition of State in s. 3(5) of the General Clauses Act as a result of the modifications and adaptations under Art. 372(A) would, no doubt, apply to the interpretation of all laws of Parliament but it cannot apply to the interpretation of the Constitution because Art. 367 was not amended and it was not laid down that the General Clauses Act as adapted and modified under any Article other than Art. 372 will also apply to the interpretation of the Constitution since its amendment in 1956. Since, until its

amendment in 1956, Section 3(58) of the General Clauses Act did not define 'State' as including Union Territories for purposes of interpretation of Art. 54, the Union Territories cannot be treated as included in the word 'State. [313 E-314 B]

Further the members of Houses known as Legislative Assemblies under Art., 168 can be members of the Electoral College under Art. 54. in the case of Union Territories the provision for legislatures is contained in Art. 239A but that Article does not mention that any house of the legislature created for any Union Territories will be known as Legislative Assembly. All that that Article lays down is that Parliament may by law create a body whether elected or partly nominated or partly elected to function as a Legislature in the Union Territory. Such a Legislature created by Parliament is not a, Legislative Assembly as contemplated under Art. 168 or Art. 54. Members of Legislatures created for Union Territories under Art. 239A cannot, therefore be held to be members of Legislative Assemblies of States. They were, therefore, rightly excluded from the Electoral College. [314 C-E]

(x) On the face of it the argument that s. 5(2) of the Act contravenes Art. 58 or any other Article of the Constitution has no force at all. The requirement laid down by Parliament that every person must be nominated by two electors as proposer and seconder is a reasonable requirement relating to regulation of election to the office of President and cannot be held to be a curtailment of the right of a candidate to stand as candidate under Art. 58. [315 E]

(xi) If in fact a licence had been granted to a private limited company with the specific purpose of obtaining the vote of an electors for the respondent, that could constitute bribery. However from the evidence led on this issue on behalf of the petitioners themselves no case at all of commission of the offence of bribery during the election period could possibly be established. [316 G-H]

(C) Per Sikri, Shelat and Vaidialingam, JJ. (Bhargava and Mitter, JJ. Concurring)-The parties must bear their own costs., The pamphlet had been sent by post and distributed in the Central Hall and this justified the petitioners in bringing the two main petitions. Most of the evidence which was led in court dealt with the question of the distribution of the pamphlet. Further, a number of witnesses had not told the whole truth. It was distressing to see truths being sacrificed at the altar of political advantage by these witnesses. [288 B-C]

JUDGMENT:

ORIGINAL JURISDICTION,: Election Petitions Nos. 1 and 3 to 5 of 1969.

Petitions under Part III of the Presidential and Vice- Presidential Elections Act, 1952.

308Sup.CI/71 M. S. Gupta, K. C. Sharma, K. L. Rathi and C. L. Lakhanpal, for the petitioner (in E.P. No. 1 of 1969). person (in E. P. No. 3 of 1969).

K. C. Sharma, K. L. Rathi, C. L. Lakhanpal, S. K. Dhingra and M. S. Gupta, for the petitioners (in E.P. No. 4 of 1969).

S. C. Malik, M. S. Gupta and K. L. Rathi, for the petitioners (in E.P. No. 5 of 1969).

C. K. Daphtary, D. Narsaraju, Mohan Kumaramangalam, S. T. Desai, S. K. Dholakia and A. S. Nambiar, for the respondent (in E.P. No. 11, 1969).

Jagadish Swarup, Soliciter-General, L. M. Singhvi, R. H. Dhebar and S. P. Nayar, for respondent No. 1 (in E.P. No. 3 of 1969) and the Attorney-General for India, Election Commission of India and Returning Officer, Presidential Election (in E.Ps. Nos., 3 to 5 of 1969).

C.. K. Daphtary, D. Narsaraju, Mohan Kumaramangalam, A. S.; Nambiar and S. K. Dhclakia, for respondent No. 2 (in E.P. No. 3 of 1969).

C. K. Daphtary, D. Narsaraju, S. T. Desai, Mohan Kumara. mangalam, H. K. L. Bhagat, S. K. Dholakia, J. B. Dadachanji, Ravinder Narain and O. C. Mathur, for the respondent (in E.Ps. Nos. and 5 of 1969).

Jagadish Swarup, Solicitor-General, L. M. Singhvi, S. P. Nayar, R. H. Dhebar and Lily Thomas, for the Attorney- General for India, Election Commission of India and Returning Officer, Presidential Election (in E. P. No. 1 of 1969).

The Judgment of S. M. Sikri, J. M. Shelat and C. A. Vaidia- ingam JJ- was delivered by Sikri, J. Bhargava, J. and Mitter, J. gave separate opinions.

These four election petitions filed under s. 14 of the Presidential a Vice-Presidential Election Act (XXXI of 1952) (hereinafter referred, to as the Act), and Art. 71 of the Constitution of India challenge the election of the respondent Shri V. V. Giri, to the office of the President of India. The petitioner in Election Petition No. 1 of 1969, Shri Shiv Kirpal Singh, was a candidate in the election, and so was the petitioner in Election Petition No. 3, Shri Phul, Singh.. The nominations of both these petitioners were rejected by the Returning Officer. Election Petition No. 4 was filed by Shri N. Sri Rama Reddy, M.P., and twelve other electors, all members of Parliament. Election Petition No. 5 was filed by Shri Abdul' Gbani Dar, M.P., and nine other members of Parliament and eight members of Legislative Assemblies of Haryana, Madhya Pradesh and Bihar. Shri V. V. Giri is the sole respondent in Election Petitions Nos. 1, 4 and 5 while in Election Petition No. 3 he was impleaded as respondent No. 2 and Union of India, through the Election Commission, was impleaded, as respondent No. 1.

After the sad demise of the then President of India, Dr. Zakir Hussain, on May 3, 1969, the Election Commission issued a notification under s. 4 of the Act appointing July 24, 1969, as the last date for filing the nomination papers, July 26, 1969, as the date for scrutiny of the nomination papers, and July 29, 1969, as the last date for withdrawal of nomination papers. Polling was fixed for August 16, 1969. 24 nomination papers were filed before the Returning Officer. On scrutiny which took place on July 26, 1969, the Returning Officer rejected 9 nomination papers, including the nomination papers of Shri Shiv Kirpal Singh, petitioner in Election Petition No. 1, and Shri Phul Singh, petitioner in Election Petition No. 3. He accepted the nomination papers of 15 candidates. No candidate withdrew his nomination by the due date. Counting of votes took place on August 20, 1969, when the result was announced and the respondent, Shri V. V. Giri, was declared elected. The election was sought to be challenged on various grounds in these election petitions. Some of these grounds were common. The grounds may be broadly formulated as follows (1) That the nomination papers of Shri Shiv Kirpal Singh, Shri Charan Lal Sahu and Shri Yogi Raj were wrongly accepted by the Returning Officer;

(2) That the nomination papers of Shri V. V. Giri. the respondent, were wrongly accepted by the Returning Officer;

(3) That the nomination papers of Shri Rajbhoj Pandurang Nathuji, Shri Santosh Singh Kachhwaha, Shri Babu Lal Mag and Shri Ram Dulate Tripathi were wrongly accepted by the Returning Officer;

(4) That Part III and section 21 of the Act are ultra-vires, the Constitution;

(5) That Rules 4 and 6(3)(a) of the Presidential and Vice-Presidential Election Rules, 1952 (hereinafter referred to as the Rules), promulgated under section 21 of the Act, are ultra vires the Constitution and the Act;

(6) That the elected members of the Legislative Assemblies of the Union Territories were entitled to be included in the Electoral college for the election of the President and their wrongful non-inclusion had not only materially affected the result of the election but also violated Art. 14 of the Constitution;

(7) That the petitioners were entitled to dispute the election even on grounds other than those mentioned in s. 18 of the Act;

(8) That the offence of bribery at the election had been committed by the respondent and his supporters with his connivance; and (9) That the result of the election had been materially affected by the commission of the offence of bribery by persons other than the respondent.

In addition to these allegations it was alleged that the offence of undue influence had been committed at the election with the connivance of the respondent. In any event the result of the election had been materially affected by the commission of this offence. We will elaborate the pleadings on this point when we come to deal with the issues arising out of that allegation. We have read the judgment prepared by Bhargava, J. He has dealt fully with the issues arising out of the

allegations other than the allegation of undue influence and, as we agree with him, it is not necessary to add anything to his reasoning. We may, however, reproduce the issues and the conclusions thereon.

Issue No. 5 of Election Petitions Nos. 1, 4 and 5/1969 E. P. No. 1 : Whether section 21 of the Act is ultra-vires the Constitution of India E. P. Nos : Whether Part III and section 21 of the Act are ultra vires the Constitution of India ?

We hold that Part III and section 21 of the Act are not ultra vires the Constitution of India.

Issue No. 6 of Election Petitions Nos. 1, 4 and 5/69 E. P. Nos. 1, 4 & 5 : whether Rules 4 and 6 (3) (e) of the Rules are ultra vires the Constitution and the rule-making power of the Central Government ?

We hold that r. 4(3) of the Rules was validly made by the Government in exercise of its rule-making power under S. 21 of the Act.

That rule being valid, rule 6(3)(e) of the Rules, which is consequential, must also be held to be valid.

Issue No. 1 in Election Petitions Nos. 1, 4 & E.P. No. 1 : Whether the nomination papers of the petitioner, Charan Lal Sahu and Yogi Raj were wrongly rejected as alleged in paragraphs 5(a) and (b), 6 and 7 of the petition ?

E.P. No. 4: Whether the nomination papers of Shiv Kirpal Singh, Charan Lal Sahu and Yogi Raj were wrongly rejected, as alleged in paragraphs 8(a), and 9(a), (b) and (c) of the petition ?

E.P. No. 5: Whether the nomination papers of Shiv Kirpal Singh, Charan Lal Sahu and Yogi Raj were wrongly rejected as alleged in paragraphs 8(a) and 9 of the petition ?

We hold that the nomination paper of Shri Shiv Kirpal Singh was rightly rejected on the ground that it was not accompanied by a certified copy of the entry relating to him in the electoral roll of the Parliamentary constituency in which he was registered as a voter. We further hold that the nomination paper of Shri Charan Lal Sahu was rightly rejected on the ground that he was not 35 years of age on the date of nomination. We also hold that the nomination paper of Shri Yogi Raj was rightly rejected on the ground that he had been proposed and seconded by the same electors who had proposed and seconded another candidate, Shri Rajbhoj Pandurang Nathuji, the nomination paper of the latter having been received earlier by the Returning Officer.

Issue No. 2 in Election Petition Nos. 1 and 5 and Issue No. 3 in Election Petition No. 4 of 1969 E.P. No. 1 : Whether the nomination paper of the respondent were wrongly accepted as alleged in paragraphs 5(c) and 8 of the petition ?

E.P. No. 4: Whether the nomination papers of the respondent were wrongly accepted as alleged in paragraphs 8(c) and 11 of the petition ?

E.P. No. 5 : Whether the nomination papers of the respondent were wrongly accepted as alleged in paragraphs 8(b) and 10 of the petition ?

We hold that the nomination papers of the respondent were validly accepted. The certified copies of the electoral roll filed with the nomination papers were issued by the appropriate authority.

Issue No. 3 in E.Ps. Nos. 1 & 5 and issue No. E.P. No. 1 : Whether the nomination papers of Rajbhoj Pandurang Nathuji and Babu Lal Mag were wrongly accepted as alleged in paras 5(d) and 9 of the petition ?

E.P. No. 4: Whether the nomination papers of Rajbhoj Pandurang Nathuji, Babu Lal Mag and Ram Dulare Tripathi were wrongly accepted as alleged in paragraphs 8(b) and 10(a), (b) and

(c) of the petition ?

E.P. No. 5 : Whether the nomination papers of Rajbhoj Pandurang Nathuji, Santosh Singh Kachhwaha, Babu Lal Mag and Ram Dulare Tripathi were wrongly accepted as alleged in paragraphs 8(c) and 11 of the petition ?

We hold that the nomination paper of Shri Rajbhoj Pandurang Nathuji was validly accepted, the certified copy of the electoral roll filed by him was a valid and a good copy. We further hold that the nomination paper of Shri Santosh Singh Kachhwaha was not invalid even though he signed his nomination paper before his seconder had signed it. His nomination paper, therefore, was rightly accepted. We further hold that the nomination paper of Shri Babu Lal Mag was not invalid even though he had signed his nomination paper before it was signed by the proposer and the seconder. His nomination paper was, therefore, rightly accepted'. We further hold that the nomination paper of Shri Ram Dulare Tripathi was not invalid. The disputed signatures have not been shown to be not genuine.

Issue No. 4 in E.P. No. 1 and issue No. 7 in E.P. Nos. 4 and 5 of 1969

(a) Whether the elected members of the Legislative Assemblies of the Union Territories were entitled to be included in the electoral college for the election of the President ?

(b) If so, whether the non-inclusion of the members of the Legislative Assemblies of the Union Territories in the electoral college amounts to non-compliance with the provisions of the Constitution ? If so, whether the result of the election has been materially affected by such non-compliance.'

(c) Whether the alleged non-compliance with the provisions of the Constitution has violated Article 14 of the Constitution?

we hold that members of Legislatures created for Union Territories under Art. 239A cannot be held to be members of Legislative Assemblies of States. They were, therefore, rightly excluded from the

electoral college. Issue No. 4(a) in Election Petition No. 1 and 5 are accordingly decided against the petitioners. In view of this conclusion Issue No. 4(b) and Issue No. 4(c) of Election Petition No. 1 and Issues Nos. 7(b) and (c) of Election Petitions Nos. 4 and 5 do not arise. Issues Nos. 1 and 2 in Election Petition No. 3 of 1969

1. Whether the nomination paper of Phul Singh, the petitioner, was wrongly rejected ?
2. What relief, if any, is the petitioner entitled to ?

We hold that the nomination paper of Shri Phul Singh was rightly rejected on the ground that his nomination paper was not signed either by a proposer or a seconder. Election Petition No. 3 of 1969 accordingly fails and is liable to be dismissed.

Issue No. 8 in Election Petitions Nos. 4 and E.P. No. 4 : (a) Whether the petitioners are entitled to dispute the election of the respondent on grounds other than those mentioned in section 18 of the Act?

(b) If issue No. 8(a) is decided in favour of the petitioners,

(i) whether the respondent or any person with his connivance printed, published and distributed the pamphlet, at Annexure A-3, to the petition ?

(ii) Whether the pamphlet, at Annexure A-3, contained any false statement of facts relating to the personal character and conduct of N. Sanjiva Reddy, a candidate, at the election and other persons named in the pamphlet ?

(iii) Whether the persons found responsible for publishing the pamphlet believed the statements made therein as true or had reason to believe them to be true ?

(iv) Whether the pamphlet was published with the object of prejudicing the prospects of the election of Sanjiva Reddy and furthering the prospects of the election of the respondent ?

(v) Whether the election of the respondent is liable to be declared void on this ground ?

E.P. No. 5: Issue No. 8 in Election Petition No. 5 is substantially the same except that the annexure in Petition No. 5 is Annexure A- 38 and not Annexure A-3.

On the first part of Issue No. 8 we hold that the petitioners are not entitled to dispute the election of the respondent on grounds other than those mentioned in s. 8 of the Act. The other part of the issues, as a consequence, do not arise at all.

Issues Nos. 9, 9A and 10 in E.P. No. 5/1969

9. Whether the respondent or any other person with his connivance committed the offence of bribery as alleged in paragraph 15 of the petition ?

9A. Whether the allegations in para 15 constitute bribery within the meaning of the Act ?

10. Whether the offence of bribery was committed at the election by any other person without the connivance of the respondent as alleged in paragraph 15 of the petition, and if so, whether it materially affected the result of the election ?

We hold that no offence of bribery was committed in the matter of grant of licence for the Polyester Factory to Swadeshi Cotton Mills.

This leaves Issues Nos. 4 in Election Petition No. 4 and Election Petition No. 5. These read as follows

(a) Whether all or any of the allegations made in paragraphs 8(e) and 13(a) to (m) of the petition constitute in law an offence of undue influence under section 18 (1)(a) of the Act ?

(b) Whether the said allegations made in paragraphs 8(e) and 13(a) to (m) are true and proved ?

(c) In the event of these allegations being proved and constituting undue influence,

(i) whether the returned candidate has committed the offence of undue influence ?

(ii) whether the offence of undue influence was committed by his workers, and if so, with his connivance ?

(iii) whether the offence of undue influence was committed by others without his connivance, and if so, whether that has materially affected the result of the election ?

(a) Whether all or any of the allegations made in paragraphs 8(e) and 13 of the petition constitute in law an offence of undue influence under section 18 (1)(a) of the Act

(b) Whether the said allegations in paragraphs 8(e) and 13 are true and proved ?

(c) In the event of these allegations being proved and constituting undue influence-

(i) whether the returned candidate has committed the offence of undue influence ?

(ii) whether the offence of undue influence was committed by his workers, and if so, with his connivance ?

(iii) whether the offence of undue influence was committed by others without his connivance, and if so, whether that has materially affected, the result of the election ?

We may now refer to the pleadings relevant to Issue No. 5 in Election Petition No. 5.

In para 8(e) of the petition it is stated that the offences of undue influence at the election have been committed by the returned candidate and by his supporters with the connivance of the returned candidate. It is further stated that the material facts, in support of this ground are in para 13 of the petition. In para 13(a) are set out the facts which according to the petitioners led to the sharp cleavage between the electors of the Congress Party and all electors in general. In brief, the history of the dispute between the two sections of the party, which we will refer to as Congress (R) led by Shri Jagjivan Ram and Congress (O) led by Shri Nijalingappa, was set out. We need not extract the pleadings on this part of the case in detail because we will briefly refer to the background of the dispute and the facts as proved before us. But we may mention that this Court is not concerned with the merits of the dispute between the two sections of the Congress Party and we will consider this matter only insofar as it throws any light on the question of the offence of undue influence.

In paragraph 13(b)(ii) it was alleged that "Shri Nijalingappa, Shri S. K. Patil, Shri K. Kamaraj, Shri Morarji Desai and Shri Y. B. Chavan, electors at the election, were threatened by Smt. Indira Gandhi on July 12, 1969, at Bangalore with serious consequences with the object of unduly influencing these people or changing their decision to nominate Shri N. Sanjiva Reddy as their candidate. The threat given was repeated subsequently between 12th and 16th July, 1969 a number of times." By order dated January 23, 1970, we directed that the petitioners were not entitled to lead evidence on this sub-para because we were of the opinion that these allegations, even if accepted, did not constitute any interference with the electoral right as defined in s. 171-A of the Indian Penal Code, i.e. the right to vote or refrain from voting at an election. As far as Shri Sanjiva Reddy was concerned there is no allegation that the Prime Minister had interfered or attempted to interfere with his right to stand as a candidate.

In para 13(b)(iii) it was alleged that a number of supporters of the returned candidate, and in particular Shri Jagjivan Ram, Shri Yunus Saleem, Shri Shashi Bhushan, Shri Krishan Kant and Shri Chandra Shekhar, Shri Jagat Narain, Shri Mohan Dharia and Shri S. M. Banerji, with the consent or the connivance of the returned candidate, published by free distribution a pamphlet, Annexure A-38, in Hindi and English, in cyclostyled form as well, as in printed form, in which very serious allegations were made which amounted to undue influence within the meaning of s. 171C of the Indian Penal Code.

In para 13(b)(iv) it was alleged that "this pamphlet was distributed from 9th to 16th August, 1969, among all the electors of the electoral college for the Presidential election. During these days it was also distributed in the Central Hall of the Parliament by the persons mentioned above. A large number of electors were asked to read the contents of this pamphlet and they were asked "Will you vote for such a debauch and corrupt man?" The minds of the voters were so unduly influenced and an impression was purposely sought to be created that if Mr. Reddy was elected to the office of the President of India, the Rashtrapati Bhavan will become a centre of vice and immorality and that Shri Reddy will assume dictatorial powers and will bring an end to democracy in India. This scare was created in the minds of the electors with the direct object of interfering with their free exercise of their electoral right to vote for the candidate of their choice. As a single instance Shri Yunus Saleem

approached Shri Abdul Ghani Dar, Member of Parliament, one of the petitioners herein, and talked to him in this behalf as stated earlier. This was said in the presence of a number of Members of Parliament."

In sub-para 13(b)(v) it was alleged that the petitioner, Shri Abdul Ghani Dar, "wrote a letter to Shri V. V. Giri, copy of which was endorsed to the Prime Minister and Shri Humayun Kabir." In this letter the petitioner requested Shri 'V. V. Giri, to condemn those who had published this pamphlet and make a public statement dissociating himself from and denouncing the publishers of the pamphlet but Shri V. V. Giri failed to do SO.

In sub-para 12 (b) (vi) it was alleged that 'this low level pamphlet had evoked great public and press criticism and it came out openly in the press that such low level pamphlets were being distributed in the election campaign." It was, further alleged that even news items regarding this pamphlet appeared in almost all leading newspapers of the country. In spite of this, the returned candidate, who was repeatedly harping upon and asking for votes in the name of character, integrity, etc., failed to dissociate himself from the pamphlet or even to condemn the same."

It was alleged in sub-para (viii) that "the language of the pamphlet and the laudatory references to Smt. Indira Gandhi and her followers themselves point to the origin of the pamphlet."

In sub-para (ix) of para 13(b) reference was made to a letter issued by Shri Madhu Limaye, M.P., which he wrote to the Election Commission of India, protesting against the alleged pamphlet and requesting him to take appropriate action. In sub-para (x) reference is made to the reply of the Chief Election Commissioner. It was alleged in sub-para

(xi) that a similar letter was written by Shri Kanwar Lal Gupta, M.P., to the Election Commission, and in sub-para

(xii) reference was made to the reply of the Chief Election Commissioner dated August 14, 1969.

In sub-para (xiii) it was alleged that the returned candidate, Shri V. V. Giri, made various statements at various places condemning the decision of the Congress Parliamentary Board in selecting Shri Reddy as its candidate and described it as immature. It is further alleged that Shri V. V. Giri, "repeatedly stated that a man of character and integrity should have been selected." "The returned candidate in well guarded language was stating that Mr. Reddy was not a man of character. He also exhorted Con- gressmen to demand a right of vote and made capital of the Congress President's appeal to Jan Sangh and Swatantara Party."

In sub-para (c) (1) of para 13 it was alleged that "the supporters of the returned candidate, Smt. Indira Gandhi, Shri Jagjivan Ram, Shri Fakhruddin Ali Ahmed, Shri Yunus Saleem, Dr. Karan Singh, Shri Dinesh Singh, Shri Swaran Singh, Shri I. K. Gujral, Shri Satya Narain Sinha, Shri K. K. Shah and Shri Triguna Sen were all occupying high ministerial, positions in the Central Gov-

ernment and they misused these Positions for furthering the Prospects of the returned candidate by telephoning a large number of electors from their ministerial telephones of the Government, openly telling them that it was a matter of prestige and existence for them and that if the electors did not vote according to their wishes for Shri V. V. Giri, they would lose all their patronage and that if the electors voted as desired by them, they would receive governmental patronage at every step. So many electors were called by the above named Ministers at their official residences and, offices in Delhi and undue influence was brought upon them by ordering them to vote for the returned candidate." It was further stated that the returned candidate, Shri V. V. Giri, sounded one of the Ministers mentioned above to influence the particular electors, who were not found amenable to his own influence or persuasion.

In para 13(c)(ii) reference was made to Shri Yunus Saleem, Deputy Law Minister, obtaining signatures of the members of Rajya Sabha on some paper which in effect amounted to pledging their support for Shri V. V. Giri, the returned candidate, and what happened in he Rajya Sabha in connection with that incident.

In sub-para 13(c)(iii) it is alleged that Shri Fakhruddin Ali Ahmed and Shri Yunus Saleem threatened the Muslim voters that Shri Sanjiva Reddy was in fact a candidate of the Jan Sangh party and if he was elected the fate of the Muslim community in India will be in anger and in constant threat of extinction. An instance was given when Shri Yunus Saleem met Shri Abdul Ghani Dar, petitioner, and talked to him in the same terms. Further, reference was made to a letter issued by Shri Abdul Ghani Dar to all Muslim electors describing such a threat as baseless and mischievous. In sub-para (iv) reference was made to a letter written by Shri Abdul Ghani Dar to the press in this connection. In paras 13(c)(v) and (vi) reference was made to a threat issued to the members of the Legislative Assembly of Bengal that if Shri Sanjiva Reddy was elected he would enforce President's rule in Bengal, thus wiping off the United Front Government and the Legislative Assembly. Reference was made to a news item appearing in the papers on August 12, 1969, in this connection. We need not say anything more about this allegation because we refused to allow evidence to be led on this issue, as the allegations do not, even if accepted, amount to "undue influence."

In sub-para (vii) it was alleged that a threat was issued to the Members of the Legislative Assembly of Andhra Pradesh that the Assembly would be dissolved if Shri Reddy was elected. By order dated January 23, 1970, we refused to allow evidence to be taken on this point as the allegations do not, even if accepted, amount to "undue influence,."

Some other allegations of undue influence were made in the subsequent paras but we did not allow the petitioners to lead evidence on those paras and they need not be mentioned. The respondent, Shri V. V. Giri, in his reply first stated that "I propose to traverse the allegations directly made against me and also the insinuations or innuendoes that anything was done at any instance or with my knowledge and consent or connivance. I submit that I cannot traverse the allegations made against the Prime Minister or any other person, as I do not have personal knowledge thereof." The respondent did not, however, admit any of the allegations or insinuations against such persons and it was submitted that the petitioners, were put to strict proof of every one of them.

The respondent denied the allegation in sub-para (i) of para 13(b) of the petition and said that "I was always appealing to the voters to exercise their vote according to their conscience and free will. I was, in fact, conducting my campaign single-handed." In reply to sub-para (iii) the respondent characterised the allegations as most reckless, wild and false and emphatically denied them. He stated that "nowhere or at no time was it ever alleged within my knowledge that I or my supporters had anything to do with the publication or circulation of the alleged pamphlets." In reply to sub-para (iv) of para 13(b) the respondent stated that he had no knowledge and did not admit any of the allegations made in that para and the petitioners were put to strict proof. He also did not admit that Shri Yunus Saleem approached Shri Abdul Ghani Dar, as alleged. In reply to sub-paras (v) and (vi) of para 13(b) the respondent denied that he had received any letter from Shri Abdul Ghani Dar. He stated that the 'only letter he received from Shri Abdul Ghani Dar was a letter dated July 24, 1969, in reply to respondent's circular letter to the electors seeking their support. He further denied that he ever received a copy of the alleged pamphlet. He further stated : "I say that in fact I saw the letter of August 11, 1969 of Shri Dar and the pamphlet attached as annexure to the Petition only after I received the copy of the Election Petition and the annexures. I entirely repudiate that I had anything to do with the pamphlet before its publication or after its, publication. I also deny that any of my workers or supporters had anything to do with it, with my knowledge or connivance."

In reply to sub-para (Viii) of para 13 (b) the respondent denied that persons alleged to be his workers and supporters were distributing the pamphlet and were telling voters not to vote for Shri Reddy, as alleged. He characterised both these allegations as baseless and false. In reply to sub- para (ix) he said that he was not aware of the letter, Annexure A-39. In reply to sub-para (x) he said that this matter Was not relevant. In reply to sub-para (xi) it was asserted that Shri Gupta's allegations were wild and baseless and the matter was irrelevant. In reply to sub- para (xii) he had no submission to make except that the matter was irrelevant.

With reference to sub-para (xiii) of para 13(b) the respondent denied that during his tour of various places mentioned in the said paragraph he stated in any well- guarded language or otherwise that Shri Reddy was not a man of character. He stated that throughout his statements he adhered to the stand he had taken in his first statement of July 13, 1969, announcing his decision to stand as a candidate for the office of the President. He also annexed copy of a Press Statement issued on August 10, 1969, in which he reiterated the aforesaid stand. With reference to sub-para (i) of para 13(c) the respondent characterised the allegations as reckless, and irresponsible. The petitioner also denied that. he sounded any Minister as alleged in the sub-para.

With references to sub-paras (ii), (iii), (iv) and (v) of para 13(c) the respondent said that he had no personal knowledge but put the petitioners to strict proof. The respondent further replied to other paragraphs but nothing much turns on them. We may mention that at various places the' respondent alleged. that the paras were vague and no particulars had been given.

The respondent asked for particulars on various points and this Court directed particulars to be, supplied. Particulars were supplied regarding para 13(b)(xiii) and para 13(c)(i). We will refer to-the particulars whenever it is deemed necessary while appreciating the evidence of the petitioners.

We need not refer in detail to the allegations in Election Petition No. 4 which are substantially similar to those in Petition No. 5. The Advocate-on-Record for Election Petition No. 4 and Election Petition No. 5 was the same and common evidence was led in both the petitions and common arguments were addressed thereon.

From the pleadings and the evidence led the main points which arise for our determination are :

- (1) What is the true interpretation of s. 18 of the Act (2) Was the pamphlet distributed by post to the electors ?
- (3) Was the pamphlet distributed in the Central Hall of Parliament ?
- (4) Does the distribution of the pamphlet by post and/or in the Central Hall constitute undue influence under s. 18 of the Act ?
- (5) Was this pamphlet distributed with the connivance of the returned candidate ?
- (6) Whether the offence of undue influence was committed by others without his connivance, and if so, whether it had material effect on the result of the election?

Let us first address ourselves to the question of interpretation of s. 18. We have read the views expressed by Bhargava, J., and Mitter J., but with respect we differ from them. Bhargava, J., has held that the distribution of the pamphlet amounted to an offence under s. 171G, I.P.C., and not under s. 171C, I.P.C. According to Mitter, J. distribution of the pamphlet by post and in the Central Hall does not by itself fall within S. 18 of the Presidential and Vice-Presidential Election Act, 1952. According to him, before any publication of a defamatory matter relating to a candidate can be treated as commission of the offence of undue influence there must be some overt act in addition to the mere publication-some attempt or persuasion of a voter to restrain the free choice of a candidate before the law of undue influence is attracted. In our opinion, if distribution of the pamphlet by post to electors or in the Central Hall is proved it would constitute 'undue influence' within s. 18 and it is not necessary for the petitioners to go further and prove that statements contained in the pamphlet were made the subject of a verbal appeal or persuasion by one member of the electoral college to another and particularly to those in the Congress fold.

The Presidential and Vice-Presidential Elections Act, 1952, was passed to regulate certain matters relating to or connected with elections to the office, inter alia, of the President of India. Part III of the Act deals with disputes regarding elections and S. 18 therein contained lays down the grounds for declaring the election of a returned candidate to be void. The relevant part of the section provides :

"If the Supreme Court is of opinion:

- (a) that the offence of bribery or undue influence at the election has been committed by the returned candidate or by any person with the connivance of the returned

candidate; or

(b) that the result of the election has been materially affected (i) by reason that the offence of bribery or undue influence at the election has been committed by any person who is neither the returned candidate nor a person acting with his connivance....

the Supreme Court shall declare the election of the returned candidate to be void."

Under s. 18, therefore, the election has to be declared to be void if, amongst other things, undue influence has been committed (i) by the returned candidate himself, (ii) by a person with his connivance or (iii) by any person who is neither the returned candidate nor one having acted with his connivance, if the result of the election has been materially affected. Section 18(2) declares that for the purposes of this section the offences of bribery and undue influence at an election have the same meaning as in Chapter IX-A of the Indian Penal Code.

We may here compare the provisions of s. 18(1)(a) and s. 18(1)(b)(i) read with s. 18(2) with s. 123 of the Representation of the People Act, 1951. This section lays down corrupt practices for the purposes of that Act which include undue influence upon proof of which an election has to be set aside. Though undue influence for purposes of that Act has the same meaning as in the present Act, that section does not go as far as s. 18 of the present Act so as to provide that even if it is committed by a third party, that is to say, not an election agent nor a person with the consent of the returned candidate, the election would still be declared to be void provided of course that it has been materially affected by such undue influence,. From the fact that both these Acts were enacted by the same Legislature and Act 31 of 1952 was passed after the Representation of the People Act was passed, it is clear that Parliament deliberately made s. 18 stricter than the Representation of the People Act, firstly, by using the words "connivance of the returned candidate" instead of the words "his consent", and secondly, by including undue influence committed even by a stranger, having nothing to do with the returned candidate, as a ground for declaring the election to be void, the only condition in respect of such an act being that it should have materially affected the election. The object of doing so is obvious, namely, that Parliament wanted to ensure that in respect of an election for the highest office in the realm the election should be completely free from any improper influence emanating even from a third party with whom the returned candidate had no connection and without any connivance on his-part. The only limitation, as aforesaid, placed in s. 18 is that in such 'a case it has to be established that the election was materially affected. The questions, therefore, which would arise under s. 18 would be : (1) Has the offence of undue influence been committed ? (2) If so, was it committed by the returned candidate or by a person with his connivance ? and (3) even if the offence committed was by a stranger and without the connivance of the returned candidate, has the committal of that offence by such "any person" materially affected the election ?

Chapter IXA of the Penal Code which deals with offences relating to elections was introduced in the Code by the Indian Election Offences and Inquiries Act (XXXIX of 1920). Section 171A defines 'candidate' and 'electoral right'. An electoral right means the right of a person to stand or not to

stand as, or to withdraw from being, a candidate or to vote or refrain from voting at an election. Section 171C, which deals with the offence of undue influence reads as- under :

"(1) Whoever voluntarily interferes or attempts to interfere with the free exercise of any electoral right commits the offence of undue influence at an election.

(2) Without prejudice to the generality of the provisions of sub-section (1), whoever (a) threatens any candidate or voter, or any person in whom a candidate or voter is interested, with injury of any kind, or

(b) induces or attempts to induce a candidate or voter to believe that he or any person in whom he is interested will become or will be rendered an object of Divine displeasure or of spiritual censure, shall be deemed to interfere with the free exercise of the electoral right of such candidate or voter, within the meaning of sub-

section(1)."

Sub-section (3) lays down that "A declaration of public policy or a promise of public action, or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this section."

Section 171F provides for the penalty for the offence of undue influence which is either imprisonment upto one year or with fine or both. Section 171G provides 3-L308 Sup CI/71 "Whoever with intent to affect the result of an election makes or publishes any statement purporting to be a statement of fact which is false and which he either, knows or believes to be false or does not believe to be true in relation to the personal character or conduct of any candidate shall be punished with fine." The electoral right of an elector, as defined in S. 171A(b) of the Indian Penal Code, means "the right of a person to stand, or not to stand as, or to withdraw from being, a candidate or to vote or refrain from voting at an election." It was said that the right to vote envisages two stages; the first stage is when the elector goes through the mental process of weighing the merits and demerits of the candidates and then making his choice and the second stage is when having made his choice he goes to cast his vote in favour of the candidate of his choice. The argument was that the language of s. 171C suggests that undue influence comes in at the second and not at the first stage, and therefore, it can only be by way of some act which impedes or obstructs the elector in his freely casting the vote, and not in any act which precedes the second stage, i.e., during the stage when he is making his choice of the candidate whom he would support. This argument was sought to be buttressed by the fact that canvassing is permissible during the first stage, and therefore, the interference or attempted interference contemplated by s. 171C can only be that which is committed at the stage when the elector exercises his right, i.e., after he has made up his mind to vote for his chosen candidate or to refrain from voting. It was further argued that the words used in s. 171C were "the free exercise of vote" and not "exercise of free vote." The use of those words shows that canvassing or propaganda, however, virulent, for or against a candidate would not amount to undue influence, and that undue influence can only mean some act by way of threat or fear of some adverse consequence administered at the time of casting the vote. We do not think that the Legislature,

while framing Ch. IXA of the Code ever contemplated such a dichotomy or intended to give such a narrow meaning to the freedom of franchise essential in a representative system of government. In our opinion the argument mentioned above is fallacious. It completely disregards the structure and the provisions of s. 171C. Section 171C is enacted in three Darts. The first sub-section contains the definition of "undue influence". This is in wide terms and renders a person voluntarily interfering or attempting to interfere with the free exercise of any electoral right guilty of committing undue influence. That this is very wide is indicated by the opening sentence of sub-s. (2), i.e. "without prejudice to the generality of the provisions of sub-section (1)." It is well-settled that when this expression is used anything contained in the provisions following this expression is not intended to cut down the generality of the meaning of the preceding provision. This was so held by the Privy Council in *King-Emperor v. Sibnath Banerji*(1).

It follows from this that we have to look at sub-s. (1) as 'it is without restricting its provisions by what is contained in sub-s.(2). Sub-s.(3) throws a great deal of light on this questions It proceeds on the assumption that a declaration of public policy or a promise of public action or the mere exercise of a legal right can interfere with an electoral right, and therefore it provides that if there is no intention to interfere with the electoral right it shall not be deemed to be interference within the meaning of this section. At what stage would a declaration of public policy or a promise of public action act and tend to interfere ? Surely only at the stage when a voter is trying to make up his mind as to which candidate he would support. If a declaration of public policy or a promise of public action appeals to him, his mind would decide in favour of the candidate who is propounding the public policy or promising a public action. Having made up his mind he would then go and vote and the declaration of public policy having had its effect it would no longer have any effect on the physical final act of casting his vote.

Sub-section (3) further proceeds on the basis that the expression "free exercise of his electoral right" does not mean that a voter is not to be influenced. This expression has to be read in the context of an election in a democratic society and the candidates and their supporters must naturally be allowed to canvass support by all legal and legitimate means. They may propound their programmes, policies and views on various questions which are exercising the minds of the electors. This exercise of the right by a candidate or his supporters to canvass support does not interfere, or attempt to interfere with the free exercise of the electoral right. What does, however, attempt to interfere with the free exercise of an electoral right is, if we may use the expression, "tyranny over the-mind". If the contention of the respondent is to be accented, it would be quite legitimate on the part of a candidate or his supporter to hypnotize a voter and then send him to vote. At the stage of casting his ballot paper there would be no pressure cast on him because his mind has already been made up for him by the hypnotiser.

It was put like this in a book on Elections "The freedom of election is two-fold; (1) freedom in the exercise of judgment. Every voter should be free (1) [1945] F.C.R. 195.

to exercise his own judgment, in selecting the candidate he believes to be best fitted to represent the constituency; (2) Freedom to go and have the means of going to the poll to give his vote without fear or intimidation." (1) & (2) We are supported in this view by the statement of Objects and Reasons

attached to the bill which ultimately resulted in the enactment of Chapter IXA. That statement explains in clear language that undue influence was intended to mean voluntary interference or attempted interference with the right of any person to stand or not to stand as or withdraw from being a candidate or to vote or refrain from voting, and that the definition covers all threats of injury to person or property and all illegal methods of persuasion, and any interference with the liberty of the candidates or the electors. "The legislature has wisely refrained from defining the forms interference may take. The ingenuity of the human mind is unlimited and perforce the nature of interference must also be unlimited.", (1) & (2). From a reading of s. 171 G it is clear that in pursuit of purity of elections the legislature frowned upon attempts to assail such purity by means of false statements relating to the personal character and conduct of a candidate and made such acts punishable thereunder. But the fact that making of such a false statement is a distinct offence under s. 171G does not and cannot mean that it cannot take the graver form of undue influence punishable under s. 171F. The false statement may be of such virulent, vulgar or scurrilous character that it would either deter or tend together voters from supporting that candidate whom they would have supported in the free exercise of their electoral right but for their being affected or attempted to be affected by the maker or the publisher of such a statement. Therefore, it is the degree of gravity of the allegation which will be the determining factor in deciding whether it falls under s. 171C or s. 171G. If the allegation, though false and relating to a candidate's personal character or conduct, made with the intent to affect the result of an election. does not amount to interference or attempt at such interference, the offence would be the lesser one. If, on the other hand, it amounts to interference or an attempt to interfere it would be the graver offence under s. 171F read with s. 171C.

We are also supported in our view by a number of decisions given on similar statutory provisions. The Government of India (Provincial Elections) Corrupt Practices and Election Petitions (1) Law and Practice of Elections & Election Petitions- Nanak Chand--1937 Ed. p. 362.

(2) Law of Elections and Election Petitions-Nanak Chand- 1950 Ed. p. 263.

Order, 1936, contains the following relevant Provisions. The expression "electoral right" was defined in the same manner as in s. 171A(b) of the Indian Penal Code. "Corrupt practice" in relation to an election by the members of a Provincial Legislative Assembly to fill seats in Provincial Legislative Council, means one of the practices specified in. Parts I and II of the First Schedule to this Order.

"Undue influence" was defined in clause 2 of the First Schedule to mean "any direct or indirect interference or attempt to interfere on the part of a candidate or his agent, or of any other person with the connivance of the candidate or his agent, or of with the-free exercise any electoral right, provided that-

(a) without prejudice to the generality of the provisions of this paragraph, any such person as is referred to therein who:

(i) threatens any candidate or elector, or any person in whom a candidate or elector is interested, with any injury of any kind; or

(ii) induces or attempts to induce a candidate or elector to believe that he, or any person in whom he is interested, will become or will be rendered an object of divine displeasure or spiritual censure, shall be deemed to interfere with the free exercise of the electoral right of that candidate or elector within the meaning of this paragraph

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

Paragraph 5 of the First Schedule is similar to s. 171G and reads as follows :

"The publication by a candidate or his agent, or by any other person with the connivance of the candidate or his agent, 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 of any candidate, being a statement reasonably calculated to prejudice the prospects of that candidate's election."

These provisions were the subject-matter of decision by the Election Tribunal in Amritsar City (Mohammedan) Constituency Case No. 2 (1). It was observed as follows :

"it is true that the definition of undue influence is widely worded and covers all kinds of fraudulent acts or omissions which in any way, directly or indirectly, interfere with the free exercise of any electoral right, and it is also true that the definition extends not only to actual interference but even to an attempt to interference.

But on the facts the Tribunal observed "There is no proper evidence of actual interference before us, and as regards the attempt, we have to see if there was the deliberate intent to mislead voters and thus make them exercise their electoral right under the wrong impression that the respondent had been set up as a candidate by the Muslim League."

It was argued before the Commission that threat or element of compulsion was an essential ingredient of the corrupt practice of undue influence. The Commission observed "We cannot, however, find any basis in the definition of "undue influence" for the proposition that unless M. Zaffar Ali Khan threatened, or compelled the voters to vote in a particular manner, the offence of "under influence" was not complete. The definition of "undue influence" is very wide in its terms and includes four different forms of interference viz., direct interference, indirect interference, direct attempt to interfere and indirect attempt to interfere, and it is nowhere laid down that such interference or attempt to interfere should be by the method of compulsion although we are prepared to concede that the inducement must be of such a powerful type as would leave no free will to the voter in the exercise of his choice. There would, of course, be in such a case mental compulsion in a sense but it is not necessary that there should be physical compulsion or that a threat must be actually held out by the person who interferes or attempts to interfere." (p. 160) In

Jujhar Singh v. Bhairon Lall(1) the petitioner was a Ram Rajiya Parishad candidate, and the respondent, Bhairon Lall, fought on the Congress ticket. It was alleged that a poster was (1) The Indian Election Cases (1935-1950)- Doabia-Vol. II, 150-157.

(2) 7 E.L.R. 457, 461.

published against the Ram Rajiya Parishad and Jagirdars and this constituted undue influence within s. 123 (2) of the Representation of People Act, 1951. It was held that the publication of the poster constituted undue influence. The Commission observed_ -.

"It may be observed that an attempt to interfere by the method of compulsion is not necessary and that even the method of inducement may be sufficient, provided it be of such a powerful type as would leave no free will to the voter in the exercise of his choice. In other words, actual physical compulsion is not necessary, but, positive mental compulsion may be enough to give rise to an undue influence. For the reasons which we shall presently give, we read this sort of mental compulsion in the poster, and, therefore, hold that it falls within the purview of undue influence."

The slogan of the poster was described thus "Vote for Congress in order to put an end to the atrocities of the Jagirdars. On the left- hand side, a person-apparently a tenant-is shown tied up to a tree with a rope. On the right, there is a well dressed Jagirdar asking his man, who is seen waving a whip, to flog the tenant. Evidently, the tenant's wife, who has apparently attempted to intervene, has been thrown down prostrate on the ground. To the right hand side of the picture, there is symbol of 'two bullocks with yoke on, and near about the slit there are the hands of so many voters, male and female, attempting to cast their votes in the ballot box."

In Radhakanta Mishra v. Nityananda Mahapatra(1) there was a difference of opinion whether the respondent and his agent had committed corrupt practice of undue influence 'by publishing a booklet entitled "why should you vote for me"

where the picture of a dead body with the objectionable caption appeared, and it was stated that the individual had died of police firing and that the Congress had killed him. Barman, J., held that it constituted undue influence while Rao, J., held that it did not. There being difference of opinion, the case went to Das, J., who held that it did not amount to undue influence. Das, J., observed regarding s. 123(2) of the Representation of People Act that "there may be some element of mental compulsion, but not necessarily a physical one or a threat actually held out by the person who interferes or attempts to interfere." We are not concerned with the question whether the booklet in that case constituted undue influence or not but only with the interpretation of the section. Barman, J., (1) 19 E.L.R. 203.

observed "A voter must be able to freely exercise his electoral right. He must be a free agent. All influences are not necessarily undue or unlawful. Legitimate exercise of influence by a political party or association or even an individual should not be confused with undue influence. Persuasion may

be quite legitimate and may be fairly pressed on the voters. On the other hand, pressure of whatever character, whether acting on the fears, threat, etc., if so exercised as to overpower the volition without convincing the judgment is a species of restraint which interferes with the free exercise of electoral right. It is not necessary to establish that actual violence had been used or even threatened. Methods of inducement which are so powerful as to leave no free will to the voter in the exercise of his choice may amount to undue influence. Imaginary terror may have been created sufficient to deprive him of free agency." The scope of s. 171C, I.P.C., was considered in a recent decision of this Court in Baburao Patel v. Dr. Zakir Hussain⁽¹⁾. Wanchoo, C.J., speaking for the Court observed :

"It will be seen from the above definition that the gist of undue influence at an election consists in voluntary interference or attempt at interference with the free exercise of any electoral right. Any voluntary action which interferes with or attempts to interfere with such free exercise of electoral right-would amount to undue influence. But even though the definition in sub-s. (1) of s. 171C is wide in terms it cannot take in mere canvassing in favour of a candidate at an election. If that were so, it would be impossible to run democratic elections. Further sub-s. (2) of s. 171C shows what the nature of undue influence is though of course it does not cut down the generality of the provisions contained in sub-section (1). Where any threat is held out to any candidate or voter or any person in whom a candidate or voter is interested and the threat is of injury of any kind, that would amount to voluntary interference or attempt at interference with the free exercise of electoral right and would be undue influence. Again where a person induces or attempts to induce a candidate, or voter to believe that he or any person in whom he is interested will become or will be rendered an object of Divine displeasure or of spiritual censure, that would also amount to voluntary interference with the free exercise of the electoral right and would be undue influence (1) [1968] 2 S.C.R. 433, 145.

What is contained in sub-s. (2) of S. 171C is merely illustrative. It is difficult to lay down in general terms where mere canvassing ends and interference or attempt at interference with the free exercise of any electoral right begins. That is a matter to be determined in each case; but there can be no doubt that if what is done is merely canvassing it would not be undue influence. As subsection (3) of s. 171C shows, the mere exercise of a legal right without intent to interfere with an electoral right would not be undue influence."

It is not necessary to consider the provisions of the Indian Contract Act or the English Law on the subject because we have a special definition given by Parliament. The question that then arises is : Whether the publication of this pamphlet can be said to constitute undue influence ? We have no doubt that it does fall within that definition. It is not necessary to reproduce the pamphlet in detail as we shall only be giving further publicity to this most objectionable pamphlet. The pamphlet, after giving various fictitious incidents of sexual immorality, describes Shri N. Sanjiva Reddy a debauch without any sense of shame or morality. Then the pamphlet asks : "Should the name of the Congress be lowered to such depths that this moral leper, this depraved man should be set up as the Congress candidate for the highest post ?" It further adds : "A senior Congress MP has expressed the fear : If Sanjiva Reddy becomes President he will turn Rashtrapati Bhavan into a harem, a centre of vice and

immorality."

It seems to us that these allegations are covered under s. 171C, even if they may, be covered under s. 171G. But we are not concerned with s. 171G because that section has not been made a ground for setting aside an election. We are only concerned with s. 171C. Be that as it may, we cannot add another subsection to s. 171C, as follows :

"A false statement of fact in relation to the personal character or conduct of any candidate even if made with the intention of interfering with the electoral right shall not be deemed to be interference within the meaning of this section."

It was said that this pamphlet cannot come under s. 171C because it was issued anonymously and, therefore, it was not likely to interfere with the choice of the electorate particularly as the electorate consisted only of members of Parliament and Members of State Legislatures. But, in our opinion, this argument is fallacious. First, this has no relevance to the question whether any attempt to interfere with the electoral right has been made or not.

Secondly, a series of anonymous attempts in a country like ours would have as much, if not more, effect as one open powerful attempt. It would be dangerous to provide a sanctuary to anonymous attempts. Thirdly, on the facts of this case, can we say that the distribution in the Central Hall is the same thing as anonymous publication ? If a member of Parliament distributes a pamphlet, is he not identifying himself with it unless he expressly disassociates himself from the pamphlet ? It seems to us that the distribution in the Central Hall by members of Parliament has the same effect as if they had endorsed the pamphlet in writing.

We are accordingly of the opinion that distribution of the pamphlet by posts also distribution in the Central Hall constituted an attempt to interfere with the free exercise of the right to vote within s. 18 of the Act. We must first mention that both the parties led extensive evidence to prove the genesis of the dispute between the Congress party led by Shri Jagjivan Ram and the Congress party led by Shri Nijalingappa. We were told about the proceedings of the Faridabad session and the Bangalore Session, and the circumstances attending Shri Morarji Desai's resignation. Further the whole of the correspondence between the Prime Minister and Shri Nijalingappa, and between Shri Jagjivan Ram and Shri Fakhruddin Ali Ahmed and Shri Nijalingappa between August 9 and August 18 was exhibited in the case. But as it is not necessary for us to determine the exact genesis of the dispute we will only take note of the fact that both the congress parties were opposed to each other at the time of the election and had different views on certain economic issues. and the Presidential election became a vital issue between them. In view of the above we will have to judge the evidence given by the witnesses with care, and wherever possible seek corroboration of the evidence from circumstances or other independent evidence.

We may now deal with the question whether it is possible to find out who printed or published the pamphlet and whether it was distributed by post and/or in the Central Hall of Parliament. Regarding the authorship of the pamphlet no evidence has been led by the petitioners but it was contended on their behalf that if the Pamphlet is closely scrutinised there are indications in the

pamphlet that it is the work of some congressmen belonging to that party of the Congress which is now led by Shri Jagjivan Ram. Although this argument appears to be attractive, we cannot come 'to the conclusion that it was the work of the members of any particular party. The fact that certain witnesses 'have admitted that the first part of the pamphlet represents their ideology leads us nowhere because it would not be difficult for other persons to reproduce their ideology in words. Their ideology is well- known and they are not averse to expounding it in great detail, as was done before us. But as we have already said', we cannot hold that it is the work of members belonging to any particular political party. Regarding the distribution by post there is overwhelming evidence that the pamphlet was widely distributed by post. Part of it will be referred to when dealing with the question of distribution of the pamphlet in the Central Hall. Even the Prime Minister. Smt. Indira Gandhi, received a copy of it, as is clear from her letter Ext. P. 85-dated August 21, 1969, to Shri Madhu Limaye, M.P., in reply to his letter dated August 13, 1969. In this letter she, inter alia, wrote "The leaflet came to me by post and I immediately asked the Home Ministry to institute an inquiry as to the source so that necessary action could be considered.

This was before I received your letter."

No evidence was led by either side as to whether such an Inquiry was made, and if so, whether the authorship of the pamphlet was found out. We may mention that Mr. Daphtary, the learned counsel for the respondent. did not argue the question about the distribution by post and admitted that distribution of the pamphlet by post had taken place.

Then we come to the question of distribution of the pamphlet in the Central Hall. On this point the evidence is extremely conflicting. Shri Kanwarlal Gupta, M.P., P.W. 11, stated that he saw the pamphlet being distributed in the Central Hall of Parliament by some members; one was Shri Yunus Saleem and the other was Shri Shashi Bhushan. He said that he was definite about these two members. He further stated that he did not receive it in Parliament but some other members did and it was being openly distributed. In cross-

examination he stated that Shri Yunus Saleem gave it to two or three people; he came and gave one pamphlet to each. Shri Gupta produced copy of a letter dated August 14, 1969, which he had written to the Chief Election Commissioner in this connection. In this letter Ext. P 37-it is. inter alia, stated :

"Moreover, pamphlets are being distributed in which vulgar charges have been levelled against another candidate for this high office. Character assassination is going on. I am sending a copy of the pamphlet in which vulgar and filthy attacks have been made against Shri N. Sanjiva Reddy. This amounts to corrupt practice under the Election Law. These pamphlets are being distributed by the supporters of 'the Prime Minister. Shri M. Yunus Saleem, a Minister in her Cabinet and some others are very active in it." (emphasis supplied) The Chief Election Commissioner acknowledged this letter by his d.o. letter-Ext. P 16- dated August 14, 1969. This letter certainly corroborates Shri Kanwar Lal Gupta's statement that Shri Yunus Saleem was distributing this pamphlet but it would be noted that in the letter to the Election Commissioner there is no mention of the Central Hall of Parliament. We will discuss

this letter in detail a little later.

Smt. Jayabehn Shah, M.P., P.W. 25, deposed that she saw this pamphlet being distributed in the Central Hall and she saw Shri Shashi Bhushan, M.P., distributing it, although she did not receive it personally from him. We may mention that she belongs to the Congress Party headed by Shri Nijalingappa.

Shri Nanubhai Nichhabhai Patel, M.P., P.W. 26, deposed that he saw the pamphlet in the Central Hall of Parliament about the 12th or 13th of August and Shri Yunus Saleem, Shri Shashi Bhushan and Shri Chandra Shekhar were distributing the pamphlet; they came to give him this pamphlet but he told them : "Yes, I have received it in my flat." In answer to the question what did they tell you" he stated "They asked me whether I had gone through this pamphlet thoroughly. I said, "Yes". Then they told me "Be careful and before voting you consider all these facts."

In answer to the question "who told you" he replied : "Mr. Saleem." In cross-examination he said that he had not told the petitioners or either of them, Shri Rama Reddy or Shri Abdul Ghani Dar,, that the pamphlet was distributed by Shri Jagat Narain, Shri Mohan Dharia or by Shri Yunus Saleem. This question was put in cross-examination in view of the particulars supplied by Shri Abdul Ghani Dar,, petitioner, that Shri Krishan Kant, Shri Chandra Shekhar, Shri Jagat Narain, Shri Shashi Bhushan and Shri Mohan Dharia had distributed the pamphlet, inter alia, to Shri N. N. Patel, M.P., Shri Abdul Ghani Dar had verified that this was on the information received from the member of Parliament mentioned as recipient of the pamphlet.

The learned counsel For the respondent, Mr. Daphtary, had at various times asked questions in cross-examination from the petitioners' witnesses in order to elicit the information they gave to Shri Abdul Ghani Dar or Shri Sri Rama Reddy with a 'view to show that the particulars and the evidence in most cases are in conflict. He says that we should draw an inference against the evidence of these witnesses wherever there is a conflict between what is stated in the particulars and what is ultimately stated in the evidence. In this particular case it appears that some particulars were given by guess work rather than by ascertaining from the witnesses. We cannot, however, disbelieve witnesses only because the particulars are at variance with their evidence. But we will bear the fact in mind while appreciating their evidence. Shri Mohan Lal Gautam, M.P., P.W. 27, stated that he had received a copy of this pamphlet in, the Central Hall of Parliament from Shri Shashi Bhushan and he saw it being distributed to other members also. In cross-examination it was put to him that his impression that Shri Shashi Bhushan gave it to him was not correct and he replied : "My recollection is quite correct because I came here on the 14th August and I had only one day here-15th was holiday and 16th was polling day, so there cannot be any confusion." We may mention that he was elected on the 13 of August, 1969, to the Rajya Sabha and took oath on August 14, 1969. Shri C. D. Pande, M.P., P.W. 29, is one of the petitioners in Election Petition No. 4. He deposed that when he was sitting in the Central Hall he saw the pamphlet being distributed by certain members; he could recollect two or three and he recollected Shri Shashi Bhushan, Shri Krishna Kant and Shri Yunus Saleem, although they did not give him a copy of the pamphlet. In cross-examination he stuck to the position and said that they did not give the pamphlet to him because "they were giving

to such persons who they thought fit, because I was too patent not to accept it." In answer to the suggestion that "loyalty was too obvious" he said "yes".- He was cross-examined in regard to the particulars and he said that he never told Shri Sri Rama Reddy that the pamphlet was given to him in the Central Hall of Parliament by Shri Jagjivan Ram and II other M.Ps. He also denied that he told Shri Sri Rama Reddy that the pamphlet was given to him on the 11th of August in the Central Hall by Shri Mohan Dharia and Shri Chandra Shekhar. In the particulars supplied by Shri Sri Rama Reddy it is stated that one of the persons who was given the said pamphlet in the Central Hall of Parliament was Shri C. D. Pande.

Shri D. N. Deb, M.P., P.W. 30, belonging to the Swatantra Party, deposed that the pamphlet was being distributed in the Central Hall by Shri Shashi Bhushan and some others who were in general called 'Young Turks', and Shri Shashi. Bhushan gave him a copy. He said that the pamphlet was distributed openly in the Central Hall. He denied in cross- examination that he told Shri Sri Rama Reddy that Shri Jagjivan Ram and 11 others gave him a copy of the pamphlet. In the particulars supplied by Shri Abdul Ghani Dar it is stated that he is one of the persons who was given a copy of the pamphlet in the Central Hall. This is rather strange because he stated in cross-examination that although he met Shri Abdul Ghani Dar, it was not he but Shri Sri Rama Reddy who asked him to give evidence. He does not say that he told Shri Abdul Ghani Dar anything in particular. Shri Hukam Chand Kachwai, M.P., P.W. 32, belonging to the Jan Sangh party, deposed that Shri Shashi Bhushan and Shri Jagjivan Ram gave the pamphlet to him in the Central Hall. He further said that "Mr. Shashi Bhushan told me that Mr. Giri was the supporter of the labour and I should support him and the other thing that he told me was that Mr. Sanjiva Reddy was a characterless person and the description of his character is in this pamphlet which I can see." He said that he received this pamphlet in the Central Hall on the 12th of August. In cross-examination he deposed that Shri Shashi Bhushan came alone and gave him the pamphlet and further that Shri Jagjivan Ram had also given him a similar pamphlet but that was on August 13, 1969'. He further stated that he went with the pamphlet to his leader, Shri Atal Behari Bajpai, although he did not ask Shri Bajpai whether what was stated in the pamphlet was true. He further said in cross- examination that he did not meet Shri Abdul Ghani Dar or Shri Sri Rama Reddy.

Smt. Pushpabehn Mehta, M.P., P.W. 36, stated that some members including Shri Shashi Bhushan, were distributing the pamphlet in the Central Hall of the Parliament and they were discussing. She stated in cross-examination that she did not report to the Security Officer. In cross- examination she stuck to her position that Shri Shashi Bhushan and Shri Krishan Kant were distributing the pamphlet. She. had not talked to Shri Sri Rama Reddy or Shri Abdul Ghani Dar or any other person on their behalf before giving evidence. She stated that there were many persons in the Central Hall and they were sitting in groups and distributing, but she did not mention Shri Jagjivan Ram's name in particular. In the particulars supplied by Shri Abdul Ghani Dar it was stated that she received the pamphlet in the Central Hall of Parliament and Shri Krishan Kant, Shri Chandra Shekhar, Shri Jagat Narain, Shri Shashi Bhushan and Shri Mohan Dharia distributed the pamphlet among others to this witness.

Shri Patil Puttappa, M.P., P.W. 50, said that Shri Yunus Saleem was distributing the pamphlet among the members in the Central Hall of Parliament and he gave him one copy. He says that he

talked to Shri Saleem and told him that he was not doing the right thing, and Shri Saleem replied : "It is none of your business.,, Later on Shri Puttappa said that he saw Shri Krishan Kant, Shri Chandra Shekhar. Shri Shashi Bhushan and Shri Mohan Dharia also distributing the pamphlet in the Central Hall. He did not complain to the Watch and Ward Officer or to the Deputy Speaker, Shri Khadilkar, and the reason he gave was : "Since I had earlier come to know that Mr. Kanwarlal Gupta had earlier complained to the Election Commissioner and the Deputy Speaker of the House, Lok Sabha." He 'stuck to his position in cross-examination. He further stated that neither Shri Abdul Ghani Dar nor anybody on his behalf asked him to come and give evidence and that if Shri Dar said on oath that he had given information relating to this, that would be false. He added that till he stepped into the: witness box nobody had asked him as to what evidence he was, going to give. In the particulars given by Shri Abdul Ghani Dar the only reference to this witness is in connection with the alleged distribution of the pamphlet on August 9, 1969, by Shri Shashi Bhushan, and Shri Krishan Kant, to him at 134, North Avenue New Delhi. We may mention that in his evidence he does state that he received one pamphlet by post at his residence but he does not say that Shri Shashi Bhushan and Shri Krishan Kant personally distributed it. Shri Sher Khan, M.P., P.W. 51, stated that he received the pamphlet in the Central Hall and three or four persons, Shri Shashi Bhushan, Shri-Krishan Kant, Shri Jagat Narain and two or three other persons gave the pamphlet to him and they were distributing it openly. In cross-examination he stated that be-fore coming to give evidence in Court he did not have conversation with Shri Abdul Ghani Dar or anyone about what he was going to depose in the Court. In the particulars it is stated that he received the-pamphlet in the Central Hall of Parliament, and Shri Krishan Kant, Shri Chandra Shekhar, Shri Jagat Narain, Shri Shashi Bhushan and Shri Mohan Dharia had distributed the pamphlet,. among others, to this witness.

Shri C. M. Kedaria, M.P., P.W. 53, deposed that Shri Shashi Bhushan gave the pamphlet to him in the Central Hall of Parliament and the Young Turks were distributing the pamphlet. Among the Young, Turks he named Shri Mohan Dharia, Shri Krishan Kant, Shri Arjun Arora, Shri Shashi Bhushan, Shri Chandra Shekhar and others. It was brought out in cross-examination that he was one of the signatories to a letter, appearing in the issue of National Herald dated August 14, 1969-Ext. R-7-written to the Congress President on August 13, 1969, demanding appropriate action against those who did not respect the party mandate in regard to the Presidential election. He stated that there was no point in complaining about the distribution of the pamphlet in the Central Hall because responsible persons were distributing it. His name appears in the particulars as one of the persons who had received the pamphlet in the Central Hall of Parliament and that Shri Krishan Kant, Shri Chandra Shekhar, Shri Jagat Narain, Shri Shashi Bhushan and Shri Mohan Dharia distributed the pamphlet to him, among others.

Shri N. Sri Rama Reddy, M.P., P.W. 54, one of the petitioners, says that he received the pamphlet both in the Central Hall as well as in his house and this pamphlet was being distributed in the Central Hall from 11th to 15th August. He received it in the Central Hall either on the 12th or on the 15th and received it from Shri Yunus Saleem and Shri Shashi Bhushan who were together. He further stated that from 11th to 15th August he saw Shri Yunus Saleem, Shri Shashi Bhushan, Shri Krishan Kant, Shri S. M. Banerjee, Maulana Ishaq, Shri Chandra Shekhar and Shri Mohan Dharia distributing the pamphlet. He did not complain to the Watch and Ward Officers because he could

never imagine that "subordinate men should be my authority to complain to. It never struck me once." Then he said that he had complained to the Deputy Chairman, who was presiding, that Shri Yunus Saleem was carrying on these nefarious activities in the house, and then Shri Yunus Saleem ran away. It seems to us that he is mistaken that his complaint to the Deputy Chairman was about the pamphlet. From 'the proceedings of the House it appears that his complaint was regarding a signature campaign which is alleged to have been carried on by Shri Yunus Saleem. In the cross-examination he said that Shri Chandra Shekhar and Shri Mohan Dharia distributed the pamphlet only on one day, may be on the 14th or 15th August. We have outlined the evidence of 12 members of Parliament above. They all deposed that Shri Shashi Bhushan, among others, either gave them the pamphlet in the Central Hall or they saw him distributing the pamphlet in the Central Hall to others.

Shri Shashi Bhushan, M.P., R.W. 38, in his evidence strongly denied the allegations against him; however he admitted that he received the pamphlet at his residence by post. He said that the evidence was totally false and the reason he gave why Shri Kanwar Lal Gupta made the statement was, in brief, that the Jan Sangh party of India was very much angry with the witness. He gave the history of the enmity which we need not set out in detail here. He said that looking to the relationship of the Jan Sangh and the witness, if Shri Gupta said so he was not surprised. He said that "there is many times conflict with him even in the House. Over there several times he levelled personal charge against me. I also spoke against his brother in the House." Regarding Smt. Jayabehn Shah's evidence he said that she deposed wrongly' because of political motives. He gave the political reasons in his evidence, one reason being that Smt. Jayabehn was a member of the Birla lobby which was very strong in Parliament and which opposed him strongly in connection with the hunger strike he undertook at the Birla Bhavan in 1968. Regarding Shri N. N. Patel, Shri Shashi Bhushan said that he did not know him and his evidence was incorrect. He said :

"When I don't know him how can he talk to me." Regarding Shri Mohan Lal Gautam he said that his evidence was wrong and he was a member of the Congress Syndicate and that was the reason why he deposed against the witness. Regarding the evidence of Shri Pande, the reason he gave was that at the time of the hunger strike at Birla House Shri C. D. Pande moved about in the Parliament House Central Hall with a 'flag' on behalf of Birlas whose 'flag', symbolically speaking, was permitted in the Parliament. He characterised the statement of Shri N. N. Patel about the distribution of the pamphlet as being without any basis and the statement of Shri D. N. Deb as quite wrong. According, to him, Shri D. N. Deb spoke falsely against him because he (Shri Deb) was a prince (Raja) and the witness had said several times in Parliament that those who presented the freedom of India on golden dishes to the Britishers had no right to take the pension as well as engage in politics. The witness further said that Shri Hukam Chand Kachwai had wrongly deposed about the giving of the pamphlet and about the witness talking with him. According to the witness the reason why Shri Kachwai gave this false statement was that he (Shri Kachwai) "belongs to Jan Sangh party. He has come from R.S.S. The R.S.S. believes in Evil Policy (Kootniti)."

Regarding the evidence of Smt. Pushpabehn Mehta, the witness said that she deposed falsely and the reason he gave was : "I am sorry that such an old woman can tell a lie. She may not be able to recognize me. One has to do everything in politics." Then the witness added that she belongs to the Syndicate Congress. Regarding Shri Patil Puttappa the witness said that he even did not recognize him and he could not give the reason why he gave the evidence falsely against him. He characterised the evidence of both Shri Sher Khan and Shri C. M. Kedaria as false. He attributed Shri Kedaria's statement to the fact that Shri Kedaria "is one of the principal' disciples of Mr. Morarji Desai. Everyone knows the relations Mr. Morarji Desai and I have. It is the effect of it. He is a member of the Syndicate." The witness described his relations with Shri Morarji Desai thus : "I have always taken Morarji Desai as an opponent of socialism a supporter of the capitalists." The witness further said that the statement of Shri Sri Rama Reddy that he and Shri Yunus Saleem were together at the time and Shri Yunus Saleem gave this pamphlet to Shri Rama Reddy was wrong. He said that Shri Rama Reddy was unhappy with him over the hunger strike at Birla Bhavan. even more than the Birlas. The witness further said that Shri Rama Reddy's statement that he was one of the persons distributing the pamphlet in the Central Hall from the 11th to the 15th August was quite wrong. He added: "He has freedom of speech. What can I do." He characterised the evidence of Shri N. N. Patel about the distribution of the pamphlet as false. He stated in cross-examination that "there was no need of talking about this pamphlet particularly. Several persons of course talked to me as happens in the lobby." He admitted in cross-examination that he had no personal enmity with Shri Pande, Smt Jayabehn Shah, Shri Sri Rama Reddy, Shri Patil Puttappa, Shri N. N. Patel, Shri D. N. Deb, Shri Mohan Lal Gautam. Shri H. C. Kachwai and Smt. Pushpabehn Mehta, and also no personal enmity with Shri Kanwar Lal Gupta but he had only political enmity. To the question : "Do you consider that whoever opposed you politically will try to involve you in this kind of work, i.e., distribution of pamphlet, etc. ? he replied : "They have involved me. Therefore I think so. The proof is there." In cross-examination he produced a copy of the Lok Sabha debate, dated December 5, 1967, to show the enmity between him and Shri Kanwar Lal Gupta. There was some discussion about Shri Gupta's alleged brother-we say 'alleged' because the petitioner's counsel tried to suggest that Shri V. M. Gupta was not Shri K. L. Gupta's brother. The witness admitted that he was against Shri Sanjiva Reddy's nomination from the very beginning. It was suggested to him that he was responsible for printing and publishing this pamphlet and he replied: "I would have committed suicide if I had brought out this pamphlet." In answer to a Court question "is it your evidence that all this discussion about the pamphlet was going on without a pamphlet being there" he replied :

"Of course, so many discussions were going on."

It will be seen from the evidence of these 12 witnesses that they all deposed to the distribution of the pamphlet by Shri Shashi Bhushan and four of them deposed to the actual receipt of the pamphlet from Shri Shashi Bhushan. Shri Shashi Bhushan has denied the allegations. There is no doubt that the evidence is conflicting, and most of the witnesses are politically interested. It is true, as urged by Mr. Daphtary, that we cannot judge the evidence by mere number of members who deposed to the distribution though we cannot completely ignore that fact. We will have to see whether any circumstances which are proved on the record corroborate one side or the other.

11 witnesses deposed that Shri Yunus Saleem either distributed the pamphlet or gave it to them in the Central Hall of Parliament. We have already referred to the evidence of Shri Kanwar Lal Gupta, P.W. 11, Shri N. N. Patel, P.W. 26, Shri C. D. Pande, P.W. 29, Shri Patil Puttappa P.W. 50 and Shri Sri Rama Reddy P.W. 54. The other six witnesses are Shri N. P. C. Naidu, P.W. 17, Shri Shiv Narain, P.W. 24, Shri Mahadevappa Rampure, P.W. 35, Shri D. S. Raju, P.W. 49, Shri Abdul Ghani Dar, P.W. 55, and Chaudhary A. Mohd., P.W. 52.

Shri N. P. C. Naidu, P.W. 17, deposed that Shri Yunus Saleem gave him one pamphlet in the Central Hall on August 11 or

12. He stated that there was a talk between him and Shri Yunus Saleem.

He belongs to the Congress Party presided over by Shri Nijalingappa. No cross-examination seems to have been directed on the point of distribution and whether Shri Yunus Saleem distributed the pamphlet. It was urged that it was an oversight.

Shri Shiv Narain, M.P., deposed that apart from receiving the pamphlet in his house he saw the pamphlet being distributed in the Central Hall by some gentlemen including Deputy Minister Yunus Saleem, Shri Chandra Shekhar, Shri Mohan Dharia, and Shri Krishan Kant. He admitted that no pamphlet was given to him by these persons. He stated that he did not tell Shri Abdul Ghani Dar or Shri Sri Rama Reddy the names of the persons he gave in the Court as having distributed the pamphlet. It is remarkable that in the particulars supplied by Shri Abdul Ghani Dar the witness is alleged to have received the pamphlet in the Central Hall of Parliament on August 11, 1969, from Shri Jagjivan Ram. Shri Mahadevappa Rampure, P.W. 35, M.P., deposed that he received the pamphlet in the Central Hall from Shri Yunus Saleem and saw him distributing it. He further says that Shri Yunus Saleem said : "You can go through this pamphlet. You will get enough information about the contesting candidates." I He stated that he received information about the 12th February that he would have to give evidence and before that he did not have any conversation either with Shri Abdul Ghani Dar or Shri Sri Rama Reddy. He admitted that he did not complain to the Security Officer about the distribution. He could not say to whom else Shri Yunus Saleem distributed the pamphlet. His name does not figure in the particulars supplied by Shri Abdul Ghani Dar or by Shri Sri Rama Reddy.

Shri D. S. Raju, M.P., P.W. 49, stated that he received one copy of the pamphlet in his house and another copy in the Central Hall of the Parliament and if he could trust his memory, it was Shri Yunus Saleem who passed it on to him. He admitted that when Smt. Gandhi became the Prime Minister she did not continue him as one of the Ministers, and that he belonged to the party of which Shri Nijalingappa is the President. He said that it was incorrect that Shri Jagjivan Ram and some others delivered the pamphlet at his residence. His name does not figure in the particulars given by Shri Abdul Ghani Dar except that it is stated that the persons mentioned in paragraph 13(b)(iii) of the Election Petition distributed the said pamphlet by leaving the same at the residence of the witness.

Chaudhary A. Mohamed, M.P., P.W. 52, deposed that he met Shri Yunus Saleem in the Central Hall and he talked about the election and Shri Yunus Saleem said that it had been decided not to vote for Shri Sanjiva Reddy. While giving the reasons for this decision Shri Yunus Saleem had said that there was some pamphlet which he had distributed and then gave a copy to the witness. He stated that he had not told Shri Abdul Ghani Dar that Shri Jagjivan Ram and others had given this pamphlet to him. In answer to the question : "I put it to you that Shri Yunus Saleem did not give the pamphlet to you or anyone else in your presence ?", he replied : "You can say so. As the pamphlet was given to me by him, how can I deny it." It is rather extraordinary that in the particulars supplied by Shri Abdul Ghani Dar, Shri Krishan Kant, Shri Chandra Shekhar, Shri Jagat Narain, Shri Shashi Bhushan, and Shri Mohan Dharia are alleged to have given the pamphlet to this witness in the Central Hall of Parliament but not Shri Yunus Saleem.

Shri. Abdul Ghani Dar, M.P., P.W. 55, one of the petitioners, deposed that Shri Yunus Saleem gave three pamphlets to him, two in English, one cyclostyled and one printed, and one in Hindi. He further deposed that Shri Yunus Saleem took him aside and on his asking Shri Saleem told him about the contents of the pamphlet. The witness said that he has one eye and that is also defective, so he could not read the pamphlet. In the Election Petition (No. 5) it was stated in sub-para 13 (b) (iv) that a scare was created in the minds of the electors with the direct object of interfering with the free exercise of their electoral right to vote for the candidate of their choice. It was also stated therein that "as a single instance Shri Yunus Saleem approached Shri Abdul Ghani Dar, member of Parliament, one of the petitioners herein, and talked to him in this behalf as stated earlier. This was said in the presence of a number of members of Parliament." Shri Abdul Ghani Dar was confronted with this statement and asked about the presence of a number of members of Parliament. He replied : "I have even now not denied that where I was, taken no other members were present." In reply to another question he said both his statements, his statement in sub-para 13 (b) (iv) and what he stated in Court, were correct. But in the particulars it is stated that Shri Yunus Saleem, Shri Shashi Bhushan and Shri Krishan Kant distributed the said pamphlet to the witness.

These particulars were given on February 7, 1970, and his evidence was taken on March 5, 1970. If his evidence in Court is true, he clearly gave false particulars on February 7, 1970. It is further evident that both his statement in sub-para 13 (b) (iv) and his statement in Court cannot be true. It seems to us that Shri Abdul Ghani Dar gave the particulars more by guess work than after having ascertained them from the witnesses or persons to whom the witnesses had spoken. We have no doubt that the verification of the affidavit giving the particulars was false in respect.

Shri M. Yunus Saleem, M.P., R.W. 51, then Union Deputy Minister of Law, stated that he had not seen anyone distributing the pamphlet in the Central Hall. In reply to the question: "Did you yourself distribute this pamphlet in the Central Hall or anywhere else as a matter of fact?", he replied : "No. A person having a little knowledge of law, how can he afford to indulge in such activities of distributing such pamphlets in the Central Hall." The learned counsel then put the statements of these 11 witnesses, which we have extracted above, and he said that they were all baseless and incorrect. He further said that he had not seen this pamphlet before the date of his evidence and so the question of his giving this pamphlet to anyone hardly arose. In connection with the evidence of Shri Sri Rama Reddy and the incident in the Rajya Sabha he admitted that he was

obtaining signatures on a paper demanding freedom of vote in Rajya Sabha before the commencement of the proceedings in the House and the moment the Deputy Chairman appeared and occupied the seat he also occupied his seat and as he had to go to the other House he left his seat. He further stated that this incident had nothing to do with the distribution of the pamphlet. Regarding the evidence of Shri Abdul Ghani Dar he said that except that he had a talk with Shri Abdul Ghani Dar about the Presidential election every other part of it was incorrect. He gave his own version of the talk which took place between him and Shri Abdul. Ghani Dar. He further deposed that Shri Kanwar Lal Gupta deposed falsely against him because "he belongs to a political organisation which is against the political party to which I belong and, also because in my election I had defeated the Jan Sangh candidate from a constituency which was overwhelmingly non- Muslim constituency and where the security of the Jan Sangh candidate was forfeited." As far as Shri Abdul Ghani Dar was concerned he said that he had deposed against him because "perhaps he is in the habit of writing false letters and filing false affidavits and attacking persons who do 'not agree with him in his political ideas." In answer to the question : "Why Shri Mahadevappa Rampure deposed against you ?", he said : "Because he is from the Mysore State and is under the influence of Shri Nijalingappa, perhaps in order to please him and gain his favour." The witness also referred to a report circulated by Shri Abdul Ghani Dar after his return from, Hai in which Shri Abdul Ghani Dar had attacked Shri Yunus Saleem. The witness admitted that he was an active supporter of Shri V. V. Giri. He further stated that Shri Shashi Bhushan was also an active supporter. He further admitted that he was supporting the move for freedom of vote which implied freedom to vote against the official candidate. He further admitted that he was one of those persons who was not very happy from the very beginning at the way the official candidate had been selected by the Parliamentary Board. He also deposed that he never saw Shri Giri during the election period.

He characterised as absolutely wrong and incorrect that he was in constant touch with Shri V. V. Giri. He further deposed that Shri Naidu and Shri Sanjiva Reddy were personal friends and Shri Naidu was canvassing for Shri Sanjiva Reddy in the Central Hall. He denied the suggestion that he was carrying the pamphlets with him. In answer to the question : "You' did not show those papers to Mr. Raj Narain. because you were carrying pamphlets with you and that would have exposed you further ?", he replied : "It is incorrect and contrary to the proceedings of the Rajya Sabha." To the question: "Mr. Kanwar Lal Gupta moved a motion that the debate on the motion be adjourned and he wanted the House to discuss what was happening in the Central Hall about the signature and thereafter reference was made to character assassination. Were you present there ?", he answered : "No such motion was moved during my presence in the Lok Sabha." He was asked whether he came to know that a point of order had been raised in the Lok Sabha on August 14, 1970, and he replied; "No body told me about it."

We will presently refer to the proceedings in the Lok Sabha. We may mention that he was cross-examined at great length and his cross-examination covers nearly 55 pages. Various questions were asked about his early career, his political association and views, etc., but we do not find it necessary to mention these because these do not assist 'us in weighing his evidence.

Shri Yunus Saleem has completely contradicted the evidence of the 11 witnesses, all members of Parliament. It is, however, remarkable that in the particulars supplied by Shri Abdul Ghani Dar the

only person to whom he is supposed to have distributed the pamphlet is Shri Abdul Ghani Dar himself. From the particulars nobody could have imagined that Shri Yunus Saleem played such a prominent part in the distribution of the pamphlet in the Central Hall, as stated by the petitioners' witnesses. Seven witnesses deposed to receiving the pamphlet from him. In these circumstances we will have to see whether any circumstances have been proved on record which corroborate one side or the other. We may next take the batch of witnesses 'who deposed to Shri Krishan Kant having distributed the pamphlet in the Central Hall These witnesses are Shri K. S. Chavda, P.W. 12, Shri Shiv Narain, P.W. 24, Shri C. D. Pande, P.W. 29, Shri Patil Puttappa, P.W. 50, Shri Sher Khan, P.W. 51, Shri C. M. Kedaria, P.W. 53, and Shri Sri Rama Reddy, P.W. 54. We have already extracted the relevant evidence of six witnesses and the only witness whose evidence we have not considered before is Shri K. S. Chavda, P.W. 12.

Shri K. S. Chavda, M.P., said that he received the pamphlet in his house and Shri Krishan Kant, member of Rajya Sabha, gave it to him in the Central Hall. He is one of the persons who entirely changed his mind about voting for Shri Sanjiva Reddy after reading the pamphlet. No cross-examination was directed in particular to the question of distribution by Shri Krishan Kant. In the particulars it is stated that Shri Krishan Kant, Shri Chandra Shekhar, Shri Jagat Narain, Shri Shashi Bhushan and Shri Mohan Dharia had distributed the pamphlet to members of Parliament, including this witness.

Shri Krishan Kant, M.P., R.W. 32, in answer to the question: "Will you please see this pamphlet? Have you ever seen this pamphlet before?" stated; "I am seeing it for the first time". In view of this statement, when confronted with the evidence of these witnesses he naturally characterised their evidence as "atrocious lie," "absolutely wrong" etc. He, however, admitted that some people had talked to him about the pamphlet and told him that such a pamphlet using some filthy and derogatory language had been written. His immediate reaction then was that some enemy of Shri Giri had done it. He further stated that Shri K. R. Ganesh, M.P., talked to him about the pamphlet though not in detail. This talk must have been either in the lobby or in the Central Hall. He further stated that at the time Shri Ganesh talked to him he was the supporter of Shri Giri, and that he never met Shri V. V. Giri during the whole of the election. He described the suggestion that he along with his colleagues were responsible for the drafting of this pamphlet and getting it published as utterly scandalous. He said that there was no foundation in the allegation that he distributed the pamphlet in the Central Hall from the 9th to the 16th August. In re-examination he was asked the reasons why the persons, who had stated that he had distributed the pamphlet to them, had given false evidence. He replied that the only reason possible could be political opposition, and by that he meant that they were the supporters of Shri Sanjiva Reddy. Here again there is direct conflict between the evidence of Shri Krishan Kant, M.P., and of the witnesses whom we have just discussed.

Coming to the evidence relating to the distribution by Shri Chandra Shekhar, it consists of the evidence of six witnesses; Shri Shiv Narain, P.W. 24, Shri N. N. Patel, P.W. 26, Shri H. C. Kachwai, P.W. 32, Shri Suraj Bhan, P.W. 33, Shri Patil Puttappa, P.W. 50, and Shri Sri Rama Reddy, P.W.

54. We have already extracted the relevant evidence' of the witnesses other than Shri Suraj Bhan, M.P. He stated that he saw the pamphlet being distributed in Parliament House by Shri Amrit

Nahata, Shri Chandra Shekhar, Shri Chandrajeet Yadav and so many others. The witness belongs to the Jan Sangh party. He said that he did not mention that Shri Jagjivan Ram and 11 other persons distributed the pamphlet. He further admitted that he did not tell Shri Sri Rama Reddy or Shri Abdul Ghani Dar that the pamphlet was given to him in the Central Hall between the 11th and the 15th of August by Shri Jagjivan Ram and others. In the particulars he is one of the members of Parliament who is supposed to have been given this pamphlet in the Central Hall of Parliament by Shri Jagjivan Ram and 11 others.

Shri Chandra Shekhar himself appeared in the witness box as R.W. 5. He stated that he did not actually see these pamphlets but a portion of the pamphlet in English was read out to him by a friend. He denied having distributed copies of the pamphlet, either the English version or the Hindi version, to other persons in the Central Hall of Parliament. He described the evidence of Shri Suraj Bhan as mere concoction and the evidence of Shri Kachwai as totally wrong. It may be mentioned that on the morning of August 9 he went to Calcutta by plane and was in Calcutta on the 9th and 10th August. On the 11th morning he left Calcutta by plane for Patna and he was in Patna on the 11th, and on the 12th morning he was due to leave for Delhi but his plane was delayed and he reached Delhi sometime in the evening of the 12th. So, if he did distribute the pamphlet it must have been only on the 13th and 14th for he says that he did not go to Parliament on the 15th as it was a holiday. In cross-examination he said that he had no discussion about the pamphlet because no serious person would discuss such a thing. He, only heard whisperings about the pamphlet. But even after coming to know about the whisperings he did not know that the pamphlet was in circulation. He characterised the suggestion that the pamphlet was prepared and published with his knowledge and after consultations with him as unfounded, incorrect, mischievous and scandalous. He admitted that he had demanded the resignation of the Congress President on August 14, 1969, but said that he demanded it on certain conditions.

The evidence of Shri Chandra Shekhar and of the other six members of Parliament, which we have extracted above, is conflicting and we will have to look for corroborating circumstances. Five witnesses deposed to Shri Mohan Dharia, M.P., as having distributed the pamphlet in the Central Hall. We have already extracted the relevant evidence of Shri Shiv Narain, P.W. 24, Shri H. C. Kachwai, P.W. 32, Shri Patil Puttappa, P.W. 50, Shri Kedaria, P.W. 53, and Shri N. Sri Rama Reddy, P.W. 54.

Shri Mohan Dharia, M.P., R.W. 17, admitted that the pamphlet in English came to him by post and that he had glanced through it. He characterised it as baseless, filthy and said that as it was not signed by anybody he did not take any serious notice of it and ignored it. In answer to the question : "Did you distribute this pamphlet in the Central Hall to anybody on any day?", he said : "I have never distributed this pamphlet. I have no relation with this pamphlet. On the contrary I would like to tell that I was not supporting Mr. Giri, but I was supporting Mr. Reddy at that time." In this statement he is supported by other witnesses. He said that when he was at Nagpur on August 9, 1969, he participated in as many as eight programmes and there was one Press Conference besides, wherein he had categorically said that Shri Reddy would win in the Presidential election. In an issue of Daily Tarun Bharat dated August 10, 1969, the report of his Press Conference was published, translation of which was marked Ext. R 12A. The report reads :

"The decision of setting up Shri Sanjiva Reddy for the Presidential election has been taken by the Congress Party and it is binding on all from Prime Minister to ordinary Member. Besides, Shri Reddy has created respect in the minds of Members of Parliament because of his impartial regime as Speaker. On this background Shri Mohan Dharia, M.P., leader of Young Turks,, in a Press Conference, confidently expressed the certainty of success of Shri Reddy in presidential election."

He admitted that his attitude in relation to the Presidential election remained the same till. the 16th August, the day of polling. He was not shaken in his cross-examination. He was asked whether he made any similar statement like th, statement he made on August 9, 1969, and he replied that there was no occasion of meeting the press after the 11th. He was confronted with a despatch in the Times of India, dated August 12. 1969, from Patna which appeared in the Times of India on August 12, 1969, which reads :

"Three 'Young Turks' today condemned what they described as a move by the "Syndicate" in the Congress to forge an alliance with the Swatantra Party and the Jan Sangh.

Mr. Chandra Shekhar, Mr. Mohan Dharia and Mr.. Shanti Kothari, all MPs, expressed concern at the recent developments in New Delhi and pointed out that the Congress President's "overtures" to Jan Sangh and Swatantra leaders had "deeper implications."

In a joint statement, they supported the action of Mr. Jagjivan Ram and Mr. Fakhruddin Ali Ahmed, Union Ministers, in seeking clarifications in this regard from Mr. Nijalingappa."

He replied that the despatch was correct but it was not his statement. He further said that on the 14th August there was a meeting of the MPs from Maharashtra and in that meeting he again had occasion to declare publicly that he stood for Shri Sanjiva Reddy in the Presidential election. He admitted that not only did he sign the requisition for calling the A.I.C.C. meeting for the Delhi Session but he was also one of the campaigners to have that meeting called. He denied seeing anybody discussing the pamphlet because he said that he was hardly there for more than one or two days; he was in Nagpur on the 9th, and the 15th. was a holiday. He characterised the suggestion that he and the other so- called Young Turks were responsible for the publication of this pamphlet as absolutely false, frivolous, baseless and so far as he was concerned it was absolutely defamatory because he had worked for Mr. Reddy and would not issue such statements Besides, in his career he had never done so. He recognised Shri Y. B. Chavan as his leader and he said that Shri Y. V. Chavan supported Shri Sanjiva Reddy. In view of his statement and the statement of other witnesses that he was a supporter of Shri Reddy it would be difficult to hold that he would be a party to distributing the pamphlet,, unless there are some other circumstances which corroborate the evidence given by the witnesses implicating Shri Mohan Dharia.

Two witnesses named Shri Amrit Nahata, M.P., as having distributed the pamphlet; Shri Venkatasubbiah, P.W. 13 and Shri Suraj Bhan, P.W. 33. Shri Venkatasubbiah said that he saw it

being distributed in the Central Hall by some members of Parliament. To the question; "Can you name anyone ?", he answered; "I cannot because so many days have elapsed. I remember to some extent Mr. Amrit Nahata I have seen distributing." He further said that he did not receive it in the Central Hall. We have already referred to the evidence of Shri Suraj Bhan, M.P., P.W. 33. He named Shri Amrit Nahata as one of the distributors.

Shri Amrit Nahata, R.W. 3, admitted that he received the pamphlet by post but said that he just threw it away. He further deposed that he did not hear any talk about the pamphlet in the Central Hall. He described Shri Venkatasubbiah's evidence regarding distribution of the pamphlet as a blatant lie. He also characterised Shri Suraj Bhan's evidence naming the witness as a distributor of the pamphlet as absolutely incorrect.

Here we have two members of Parliament saying that Shri Amrit Nahata was distributing the pamphlet in the Central Hall, while Shri Amrit Nahata has flatly denied the allegation. Further Shri Venkatasubbiah was not very definite, though no questions were asked in cross-examination to elicit why he remembered Shri Amrit Nahata's name to some extent. Nor was any question asked to establish any personal or political animosity between Shri Amrit Nahata and the two witnesses. His name does not appear in the particulars given by Shri Abdul Ghani Dar, though his name does appear in the particulars given by Shri Sri Rama Reddy.

On this evidence it would be difficult to hold that it has been proved that Shri Amrit Nahata had distributed the pamphlet unless some corroboration is forthcoming. This leaves us to deal with five other alleged distributors of pamphlets in the Central Hall. They have one thing in common. Only one witness in each case saw them distributing the pamphlet. Shri Jagat Narain, M.P., R.W. 25, was seen by Shri Sher Khan, P.W. 51, distributing the pamphlet with Shri Shashi Bhushan, and Shri Krishan Kant. Shri Jagat Narain deposed that he did not receive any pamphlet and saw it for the first time in Court. He further says that his correspondent-the witness has connection with a newspaper Hind samachar Shri Suri, who represented the paper from Delhi asked him in the first or second week- of August whether he had received the pamphlet or not. He said that the evidence of Shri Sher Khan, M.P., was not true. It is difficult to believe that he never came across the pamphlet and saw it for the first time in Court. He was a journalist and the query of Shri Suri would at least have set him on the trail.

Shri N. Sri Rama Reddy, P.W. 54, said that Shri S. M. Banerjee was one of the persons who was distributing the pamphlet in the Central Hall and he had named him in the petition. Shri S. M. Banerjee, M.P., R.W. 31, who is politically with the Communist Party of India, headed by Shri S. A. Dange, stated that "a pamphlet was sent to my address by post and when my wife told me that this pamphlet contained certain things which according to, her were altogether rubbish and that it was anonymous I asked her to tear it off." He characterised Shri Sri Rama Reddy's evidence regarding him as absolutely false and malicious. He admitted that some members of Parliament had talked to him and told him that there was a very nasty pamphlet issued against Shri Sanjiva Reddy but he did not think it necessary to make further enquiries. In answer to the question: "Who were the persons who talked to you about this pamphlet ?", he replied : "Many people, it was the talk of the day." The cross-examination further proceeded thus Q. Kindly give some names ?

A. My own group. Members of Parliament and some of them did talk to me about this pamphlet.

PC. In the Central Hall ?

A. In the Central Hall, lobby and even outside the Parliament. But I told them we were more interested in an ideological fight than this character assassination. His evidence clearly corroborates the evidence of P.Ws. to this extent that the pamphlet was the talk of the day. We will examine the implications of his statement a little later.

On this evidence it would be difficult to hold that Shri S. M. Banerjee was one of the distributors unless there is some independent corroboration.

Shri Jagjivan Ram, M.P., R.W. 52, was named by Shri H. C. Kachwai, M.P., P.W. 32, who said that Shri Shashi Bhushan and Shri Jagjivan Ram gave the pamphlet to him in the Central Hall. Later he clarified that Shri Shashi Bhushan and Shri Jagjivan Ram came separately and Shri Jagjivan Ram also gave him a similar pamphlet. Shri Jagjivan Ram characterised this part of the evidence of Shri H. C. Kachwai as entirely and completely false. He further said that Shri Kachwai belonged to Jan Sangh, which party was, due to the Presidential election, more virulent about the Congress than usual. We may mention that he said that he did not receive the pamphlet by post or in the Central Hall and he did not see any distribution in the Central Hall or hear any discussion about this pamphlet during that period, although he used to go to the Central Hall practically every day after the Question hour and usually sat there for half an hour.

In the 'particulars given by Shri Abdul Ghani Dar it is stated that Shri Jagjivan Ram distributed the pamphlet to Shri Shiv Narain, M.P., and Shri Hukam Chand Kachwai, M.P. Shri Shiv Narain, P.W. 24, did not implicate him though he implicated others. Shri Jagjivan Ram was at the relevant time a Cabinet Minister and one of the important leaders of the Congress Party. If he was going to distribute the pamphlet it is difficult to believe that he would. distribute it to one member of Parliament only and that too to a member belonging to the Jan Sangh. If he was going to distribute we would expect him to approach many members of Parliament and play a leading part. In the circumstances we cannot hold it proved that Shri Jagjivan Ram distributed the pamphlet in the Central Hall unless there is independent corroboration.

Shri Chandrajeet Yadav, M.P., R.W. 56, was seen by Shri Suraj Bhan, P.W. 33, distributing the pamphlet in the Central Hall. The latter belongs to the Jan Sangh. Shri Chandrajeet Yadav, in his evidence, said that Shri Suraj Bhan had 'made a completely false and baseless allegation. Actually he would deem it below his dignity to distribute a pamphlet of this nature. He guessed that Shri Suraj Bhan had named him because he had always attacked the policy of Jan Sangh. He said that although two friends talked to him. about the pamphlet at a function he had not seen the pamphlet till he came to this Court.

On this state of evidence we cannot hold it to be proved that Shri Chandrajit Yadav distributed the pamphlet unless there is some independent corroboration. Maulana Ishaq Sambhali, M.P., R.W. 57, is implicated by Shri Sri Rama Reddy, P.W. 54, who said that he saw Maulana Ishaq and others

distributing the pamphlet and he had named him in the particulars supplied by him. Maulana Ishaq Sambhali, when showed this evidence, deposed : "I am sorry if he has mentioned my name for distributing the pamphlet. It is totally false and incorrect." He further said that he was elected on the Communist Party of India ticket and worked for Shri V. V. Giri, spoke to members of Parliament and approached M.L.As. of his state (Uttar Pradesh). He also said that he did not hear any talk about this pamphlet before the filing of this petition.

On this evidence we cannot hold it proved that Maulana Ishaq Sambhali distributed the pamphlet in the Central Hall unless there is corroboration.

Apart from what we have already noticed, the petitioners led evidence to show that the pamphlet was not only widely distributed but also talked about for two to three days. Shri S. K. Patil, M.P., P.W. 16, said : "It was the talk of the town. In the Central Hall and wherever we went, there was nothing except this pamphlet." They considered what to do but could do nothing. He tried to trace the Press "but there was nothing."

Shrimati Tarkeshwari Sinha, M.P., P.W. 34, said that she did not see the pamphlet being distributed but found that the pamphlet had become the subject-matter of discussion in the Central Hall amongst all groups and in the Ladies lounge where they generally went and sat. We will refer to her alleged visit to Shri V. V. Giri later.

Shri Ram Krishan Gupta, M.P., P.W. 43, said that he received the pamphlet in the house and he saw the pamphlet being distributed in the Central Hall but did not receive it there and could not remember who was distributing. We will refer to his evidence regarding his alleged visit to Shri V. V. Giri later.

Shri Morarji Desai, M.P., P.W. 39, said that he received the pamphlet by post. He gave the following reasons for not doing anything : "I could not do much about the pamphlet because one cannot merely deny it. One has to give facts. There are so many people mentioned anonymously in it. It would take a long time to enquire. Within two days it was not possible to find out anything to contradict this effectively. It would also mean that mere denial would give more prominence to it and make its circulation even more effective." He said that in his statement printed in the Hindustan Times of August 15, 1969-Ext. R 6--he indirectly referred to the pamphlet in the following sentence : "All of us have at different times received our share of mud slinging, criticism or hostility, but the Organisation has remained supreme over individuals and bodies and we have served it loyally and faithfully." (emphasis supplied) Shri S. Nijalingappa, P.W. 47, who was President of the Indian National Congress in August 1969, said that he received the pamphlet on 11th or 12th August but did not try to find out who were the persons who had published this pamphlet, because in the first place it would be difficult and in the second place the more he looked into and made enquiries, it would possibly receive greater publicity which he wanted to avoid. He further said that quite a few Members of Parliament brought the pamphlet to his notice. Shri M. S. Gurupadaswami, M.P., P.W. 48, then a Minister (He ceased to be a Minister on October 17,, 1967) said that he received the pamphlet by post. To the question: "Did you come across this pamphlet in Parliament?", he answered :

"Yes. I saw the pamphlet being read by many people in the Central Hall of Parliament." He added that he did not see it being distributed but only read.

Before dealing with the evidence of the respondent's witnesses we may deal with certain contemporaneous documents and debates in Parliament on which the petitioners rely. Shri Madhu Limaye, M.P., P.W. 8, wrote to the Chief Election Commissioner on August 13, 1969-Ext. 7 P17- about the pamphlet. This letter does not say anything about distribution in the Central Hall of Parliament but it corroborates the case of distribution. He deposed that he feared that it might affect the chances of his Presidential candidate, meaning the respondent, and it would affect the validity of the election. We have already mentioned that he wrote to the Prime Minister whose reply we have already referred to. Shri Kanwar Lal Gupta, M.P., P.W. 11, wrote a letter, Ext. 237, on August 14, 1969- to the Chief Election Commissioner. It is urged that the first para of the letter clearly indicates distribution in the Central Hall. The first para reads:

"The Prime Minister, along with some of her colleagues in the Ministry, are putting pressure on some Members of Parliament to vote for Shri V. V. Giri, who is a candidate for the post of President. A signature campaign is also going on in the Parliament. Money is being offered to some members who vote for Shri V. V. Giri. Moreover, pamphlets are being distributed in which vulgar charges have been levelled against another candidate for this high office. Character assassination is going on. I am sending a copy of the pamphlet in which vulgar and filthy attacks have been made against Shri N. Sanjiva Reddy. This amounts to corrupt practice under the Election Law. These pamphlets are being distributed by the supporters of the Prime Minister. Shri M. Yunus Saleem, a Minister in her Cabinet and some others are very active in it."

It is urged that the words "moreover pamphlets are being distributed" and "these pamphlets are being distributed by the supporters of the Prime Minister. Shri M. Yunus Saleem, a Minister in her Cabinet and some others are very active in it" and read together and properly interpreted mean that the pamphlets were being distributed in ways other than by post; it is nobody's case that Shri Yunus Saleem was active in distributing the pamphlet by post. On the respondent's side it is urged that the words "are very active in it" have reference not to distribution of the pamphlet but to the signature campaign. This is also a possible interpretation but we are of the opinion that, in the context, the interpretation suggested by the petitioners is correct. If the respondents interpretation were correct, we would expect some other word to be used than "distributed" and further the word "being" would not have been used and instead the words "have been" would have been employed. Further, if reference is to distribution by post it is nobody's case that the supporters of the Prime Minister were, doing it. No body then knew and no body even now knows who actually posted them. It may have been done by supporters not belonging to the Congress Party. But having seen persons actually distributing the pamphlets the writer could very well use the expression "supporters of the Prime Minister"

In our opinion, this letter; which is contemporaneous, strongly corroborates the story told by the petitioners' witnesses that some persons alleged to be the supporters of the Prime Minister were distributing the pamphlet in a way other than through post. Reading the letter as a whole we would interpret the words "active in it" as active in distribution because the sentence in which it occurs follows immediately the sentence "these pamphlets are being distributed by the supporters of the Prime Minister."

Shri Kanwar Lal Gupta has, in his evidence, implicated Shri Yunus Saleem and Shri Shashi Bhushan though he also stated that there were many others. This letter corroborates his version. At the time he wrote there was no question of creating evidence for a possible election petition. His letter was even mentioned in a news item.

Reliance was also placed on a number of proceedings in Parliament, but we find that the only proceeding that assists the petitioners is that in the Lok Sabha on August 13, 1969, when discussion took place on a submission under Rule 340 made by Shri Kanwar Lal Gupta. Shri Om Prakash Tyagi said:

"I am not going to surrender (interruptions). Just now, a minister was questioned about obtaining signatures and objection was before there. I want to inform, you that even dirty pamphlets are being distributed. On reading which one's head goes down with shame. Therefore I request you that the motion presented by Shri Gupta Ji should be put to vote. False propaganda which is going on in the lobbies should be stopped."

These statements obviously allude to the distribution of the pamphlet in the premises of Parliament.

Now let us look at the evidence of witnesses of the respondent other than those alleged to be distributors of the pamphlet in the Central Hall. Apart from the M.Ps. who are alleged to have distributed the pamphlet in the Central Hall, 14 other M.Ps. who have been examined on behalf of the respondent depose on the point of distribution of the pamphlet and discussion about it. These are Sarvshri Munshir Ahmed Khan, R.W. 2, M. Anandani, R.W. 4, R. K. Sinha, R.W. 8, Smt. Savitri Shyam, R.W. 11, Sarvshri Syed Ahmad Agha, R.W. 10, P.M. Syed, R.W. 13, M. V. Krishnappa, R.W. 22, Gulabrao Raghunathrao Patil, R.W. 29, P. Viswainbharan, R.W. 39, I. K. Gujral, R.W. 40, Fakhruddin Ali Ahmed, R.W. 44, T. D. Kamble, R.W. 46, Raghu Ramiah, R.W. 47, and Tulsi Das, R.W. 50. All of them (except Shri Kamble. R.W. 46, who was away from Delhi from 8th to 14th August and did not go to the Central Hall on 15th August) said that they saw no distribution of the pamphlet in the Central Hall. Ten of them said that there was no discussion about the pamphlet in the Central Hall. One lady member said that there was no discussion in the Ladies Lounge. Two (R.W. 4 and R.W. 8) have admitted that there was discussion. Five- admitted having received the pamphlet by post (R.W. 2, R.W. 3, R.W. 8, R.W. 11 and R.W.13). It is not necessary to refer to their evidence in detail because it is possible that these witnesses did not see distribution of the pamphlet in the Central Hall. Some of the petitioners' witnesses also did not see distribution with their own eyes. The Central Hall was stated to be a big place, having as many as 396 fixed seats. A member sitting on one side may not be able to observe what is happening on the other side of the Hall. But it

is hardly believable that when the pamphlet was the talk of the town, as admitted even by Shri S. M. Banerjee, these M.P.s. did not discuss, however casually, or hear or overhear discussion about the pamphlet. Some of the alleged distributors have also denied hearing talk or discussion about the pamphlet. We find it equally difficult to believe them in this respect. We may add that Shri Dinesh Singh (who is not included in the M.P.s mentioned above) stated in cross-examination that he came across the pamphlet and glanced through it. Both sides refrained from asking him about distribution of the pamphlet in the Central Hall. But the omission on the part of the counsel for the respondent to ask him about it has some significance.

We may here briefly refer to the evidence of Shri M. Anandam, R. W. 4, and Shri R. K. Sinha, R. W. 8, as their evidence lends support to some extent to the case of the petitioners. Shri M. Anandam, M.P. deposed that he received the pamphlet (Ext. P 18/B) in English by post, just glanced through it and it was in such filthy language that he just threw it away. He saw no one distributing it in the Central Hall. To the question : "Do you remember any discussion about this pamphlet in the Central Hall?", he answered :

"There was a discussion amongst some members and some of us felt that this was in such a filthy language and scurrilous language that no body should go down to that level for the purpose of propaganda and we felt that at least members of Parliament would decide issues like the Presidential election on better considerations. Therefore, we ignored the pamphlet." He said that he belonged to the Congress Party headed by Shri Jagjivan Ram. In cross-examination he said: "There was discussion about this amongst some members of Parliament who had received it by post" and that he did not see the pamphlet in anybody's hand. Shri R. K. Sinha, M.P., R.W. 8, in his examination-in-chief said that he did not see anyone distributing the pamphlet in the Central Hall, but there was some discussion about the pamphlet with friends about this. He, however, did not join the discussion but only overheard. He characterised the suggestion that was "one of the persons responsible for the publication and distribution of the pamphlet as 'wrong,' 'blasphemous', 'total lie'. He said that he never read the pamphlet but he knew about it because in the Central Hall friends had told him that this was a highly vulgar and spurious pamphlet. He further said that one or two journalists and probably Shri Balraj Madhok were discussing it and brought it to his notice. He further added that "may be Justice Mulla was there". He also said that to his knowledge the pamphlet reached members of Parliament by post.

These witnesses support the case of the petitioners at least to this extent that there was discussion about the pamphlet in the Central Hall.

In this connection the respondent's learned counsel relied on the statements of Shri Mohanlal Sukhadia, Chief Minister Rajasthan, R.W. 42, and Shri V. P. Naik, Chief Minister Maharashtra, R.W. 43. The former deposed that he came to Delhi on the 12th or 13th August and many Congress M.P.s came to see him but nobody mentioned these pamphlets. Even Shri Nijalingappa, Shri Morarji Desai or Shri Chavan did not speak about them to him. Further, although he had telephonic talk

with Shri Nijalingappa, so far as he could remember there was no talk about the pamphlet. He further deposed that when he came to Delhi on 24th August he heard no complaint from any of the leaders or otherwise about the pamphlet. Neither was there any talk in the meeting of the Working Committee on August 25. We may mention that various witnesses support his version regarding the meeting of August 25. He further said that nobody in Jaipur mentioned to him about the pamphlets and he did not see them there. Shri V. P. Naik said that he came to Delhi often during the election period in August and no one spoke to him about these pamphlets. Neither was anything said to him during the course of telephonic conversation, which he had with members of Parliament, and Shri Nijalingappa. He further said that he was in Delhi about the 20th August, met the Prime Minister, the Home Minister and Shri Nijalingappa, but none of them made any complaint about these pamphlets. It is difficult to appreciate how the evidence of the two Chief Ministers helps us on the question of distribution of the pamphlet. Since the Prime Minister and so many members of Parliament have admitted receipt of the pamphlet by post, at the most the only inference that can be drawn is that the Prime Minister and other members of Parliament who met the two Chief Ministers did not think it advisable or important to talk about it to the two Chief Ministers. We can, therefore, hardly draw the inference that no discussion of the pamphlet took place. Viewing the evidence as a whole we are of the opinion that the pamphlet was distributed by post and in the Central Hall of Parliament by some members of Parliament and there was wide discussion about it in the Central Hall. As we have mentioned earlier, the evidence of the witnesses of the petitioners that there was distribution in the Central Hall is corroborated by contemporaneous documents. On the question as to who were the persons who were distributing the pamphlet in the Central Hall it is not, in our opinion, necessary for us to arrive at a finding from a mass of evidence which is both conflicting and partisan. The distribution of the pamphlet in the Central Hall was relied on by the petitioners for the purpose of bringing home to the respondent knowledge about the pamphlet and its publication and his connection with it. The petitioners, however, have failed in their object, for, there is no evidence whatsoever to show that the respondent had any connection with the pamphlet or with its distribution. Nor is there any evidence to show that anyone connected with the distribution either through the post or in the Central Hall had any contact with the respondent, or that he distributed it with his knowledge or connivance. The question of identity of those who distributed it in the Central Hall, therefore, has in these circumstances become unnecessary and even futile. What is also equally important is that there is no provision in the Act for giving notice to and hearing persons alleged to be the distributors. A finding that a particular member or members of Parliament committed the offence of publication, an act punishable under the Penal Code, would thus amount to a finding arrived at without giving such person or persons an opportunity of being heard. It was urged on behalf of the petitioners that the respondent, Shri V. V. Giri, had connived at the distribution of the pamphlet. Before we examine the evidence relied on behalf of the petitioners to prove connivance, it is necessary to give a few particulars about the house where Shri V. V. Giri had his office

and where Smt. Tarkeshwari Sinha, P.W. 34, and others are said to have gone to see him. There is a small lawn in front of the house and the size of the lawn is approximately 7ft. x 18 ft. when a visitor comes to the house he goes inside through the verandah, which is approximately 4 ft. x 10 ft. This verandah is open and adjoins the office room and the drawing room. Shri Giri used to sit in the drawing room which was air-conditioned.

Shri N. P. C. Naidu, M.P., said that Shri Yunus Saleem gave him the pamphlet in the Central Hall on the 11th or 12th of August, and he also received the pamphlet by post. After reading the pamphlet he felt disturbed and he wanted to meet Shri V. V. Giri and tell him to contradict the pamphlet because Shri V. V. Giri's supporters were distributing the pamphlet. He said : "So I went to his house to meet him in Defence Colony. There were the supporters of Mr. V. V. Giri and they asked me if I was also his supporter when I told that I had only gone to see him. I could not see him and on the same day I wrote a letter to him requesting him to please contradict this otherwise it will not be a fair election."

He stated that he, sent the letter by ordinary post and though he thought that he had a copy of it he did not produce it. In cross-examination he admitted that he had not told the petitioners that he went to Shri V. V. Giri and brought the pamphlet to his notice and asked him to dissociate himself from it. But in the particulars supplied by Shri Sri Rama Reddy it is stated that persons named below went to the residence of Shri V. V. Giri at C-243, Defence Colony, New Delhi, on the dates noted against each and they brought this pamphlet to the notice of Shri V. V. Giri :

1. Shri Ram Krishan Gupta, M.P.-13-8-69
2. Smt. Tarkeshwari Sinha, M.P.-14-8-69
3. Shri N. P. C. Naidu, M.P.-13-8-
4. Shri Hari Krishna, M.P.-14-8-69 (We may mention that Shri Hari Krishna was not examined).

It will be noticed that in his evidence Shri N. P. C. Naidu does not say that he saw Shri V. V. Giri; there is also no proof that he ever wrote a letter. Shri V. V. Giri denied in the witness box having received any letter from Shri Naidu. Shri V. V. Giri deposed that he did not know Shri Naidu and he did not think that he had ever seen him. Shri Giri further stated that he never received any letter from Shri Naidu requesting him to contradict the contents of the pamphlet.

Smt. Tarkeshwari Sinha, M.P., P.W. 43, deposed that the members of Parliament seemed to be affected by the pamphlet and that the atmosphere was bad as the character of Shri Sanjiva Reddy was being discussed. She said :

"I went to Mr. Giri's house on 14th of August in Defence Colony. Somebody came out. I asked him that I would like to see Mr. Giri. He went inside and I was in verandah and Mr. Giri came and I showed this pamphlet to him and I said to him that the election that is going on is for the highest office in the country and I think that you should repudiate this pamphlet, because this pamphlet is not only untrue, but is mean. He said : "What can I do about it?" I said to him that as a contestant for the highest office in the country it is your obligation to maintain the standard of the election campaign. He again repeated : "What can I do in the matter?" and suddenly became very cold and became quite and when I found that there was no response, wished him and came back."

She, however, admitted in cross-examination that she had not referred to this pamphlet in any of her articles but explained that those articles were part of the political commentary and there was no mention of the character of the candidates or their qualifications and disqualifications. She admitted that she belonged to the group of which Shri Nijalingappa is the President. She denied the suggestion that the entire alleged interview between her and Shri Giri was a fiction. She further said that she went alone and no one else was present when she had this conversation with Shri Giri. She could not remember the exact time but it was sometime in the morning.

Her statement which we have quoted above was put to Shri Giri and he characterised it as absolutely incorrect and said that she never came. He added : "I can only say with respect that it must be a figment of her imagination." He further said that he was always on good terms with her and had no enmity with anyone,, especially not with her. He further stated that there was no reason why he should not have met her in the drawing room and he would certainly have invited her into the drawing room and heard her with respect whatever she wanted to say, but she never came at all. Before we evaluate this evidence we will have to refer to the evidence of some other persons. The next witness who was relied on in this respect is Shri Ram Krishan Gupta, M.P., P.W. 43. Shri Ram Krishan Gupta, when asked whether he did anything in connection with the pamphlet, replied;

"After two or three days (of the receipt of the pamphlet) my daughter told me that she had received a telephone from Shri V. V. Giri. She noted his address and telephone number also." He went to see Shri Giri in Defence Colony about two or three days before the election. He further said that he met Shri Giri and the following conversation took place "Q. What was the talk between you two ?

A. He asked me to support him and I refused that I am committed to Sanjiva Reddy. I am a congress man and congress had put up Sanjiva Reddy. Therefore, I must support him. Moreover, a party or candidate which issues such posters does not deserve any help.

Q. What was his reply?

A. He said nothing; only this much that- what can I do.

Q. Did you ask him about this pamphlet ?

A. Yes, about this pamphlet that such

posters should not be issued and should be contradicted by his party. His reply was :

what can I do ?"

In cross-examination he stated that he did not tell Shri Abdul Ghani Dar or Shri Sri Rama Reddy the exact date he, went to Shri Giri's house but only told them that it was two or three days before the election. He said that there was no guard posted at Shri Giri's house because Shri Giri was interested in the election and further that two or three persons were sitting when he had this conversation with Shri Giri but he did not know them. It was difficult for him to give any idea or description of those persons. He further said that he went in the evening and he went from the front side and he could not give any further description of the house, whether the entrance of the house was in the front side, or whether it is only a ground floor house or whether there is any upper floor on it because he went there casually. He explained that by evening he meant 7 or 8. It was put to him that his entire story of going to Shri Giri's house was false, and he said : "It is absolutely correct. If you examine my telephone directory, his number is still written there by my daughter." The learned counsel for the respondent read the evidence, which we have extracted above, to Shri V. V. Giri and asked the question : "Is any part of this statement correct ?" Shri Giri replied : "He never, met me." We may reproduce the rest of the examination "Q. Did you telephone ?

A. I never telephoned to him. I think to his daughter also I never spoke on telephone.

Q. Did you meet any visitors in the verandah ? A. I never met anybody in the verandah; it was hot and sultry outside at that time and I received every one in the drawing room."

Shri Harbans Lal Sehgal, Deputy Superintendent of Police, R.W. 7, was one of the Security Officers assigned to guard Shri V. V. Giri. He had been with him since Shri V. V. Giri was Vice-President of India in 1967. He said that another Security Officer, Shri R. N. Mullick, was also assigned the same duty. Between themselves they took shifts at No. C- 243, Defence Colony. Shifts were normally between 8 a.m. to 2 p.m., 2 p.m. to 8 p.m., and the first man would come from 9 p.m. till morning. According to him there was ;no time when a Security Officer was not present. Shri Giri did not sleep at No. C-243 Defence Colony but at C-496, where the Security Officer used to stay. He stated that he was on duty on August 14, 1969, and he remembered this because he returned from tour with Shri V. V. Giri on August 13, 1969, in the afternoon, then his counter-part Shri Mullick took over the night duty and he came on duty in the morning of the 14th. He said that he took over duty at 8 in the morning. He further said that a gunman was always on duty and the gunman used to stand near the gate. He described the procedure when anyone came to see Shri Giri thus : "He shall meet us-one of the Security Officers who was present there-and we informed either Mr. Krishna Rao or the son of the President, whosoever was pre- sent and if they allowed him, we took him to the President in the drawing room where the President was sitting." He said that the drawing room doors closable door-opened on the verandah from, which they took the visitors. The further procedure was that after he had shown the visitor the door was closed as the room was air-conditioned. He further deposed that he knew Smt. Tarkeshwari Sinha by sight, that Smt. Tarkeshwari Sinha never came during his duty hours and further that the President never met anybody in the verandah. When asked : "How do you know Shrimati Tarkeshwari Sinha ?", he replied : "I am in the Security Branch

of the Police for 12 years and I know she is a prominent member of the Parliament and then she was a Deputy Minister in the Ministry of Finance as I know some other members of Parliament and Ministers which I saw during the official duties and came in contact otherwise.' He asserted that to his knowledge no one who came to see Shri Giri was ever refused entry. He said that he did not know Shri Ram Krishan Gupta, M.P., neither did he know Shri N.P.C. Naidu. In cross-examination he said that he did not keep a visitors book nor a vigilance book but he used to make a report of his duties to the Superintendent of Police. He never gave the names of those persons who came and visited Shri Giri to the Superintendent of Police. He was unable to give the names of the persons who visited Shri Giri on 28th July or 14th August. He explained : "I don't remember as to who came and on what particular date but I can give you the names whom I saw coming and meeting the President." He said that he read the evidence of Shri Krishna Rao in the press. We may mention that the evidence of most of the witnesses used to be reported extensively in the press. The witness denied that his relations with the family members of Shri V. V. Giri were informal and added: "we never cultivate relations with the family members of the VIP." It was suggested that it would be too hot for him to sit in the verandah or in the lawn but he replied that it all depended in one's training and nature of duties. In cross-examination he said that he did not know of any case where Shri Krishna Rao or Shri Giri's son refused to allow any visitors to see Shri Giri. It is not necessary to give further details of the cross-examination but we are of the view that his evidence was not shaken by the various questions put to him. There is no reason why we should not place reliance on the evidence of this officer.

The evidence of Shri Mullick, Deputy Superintendent of Police, R.W. 45, is similar. He said that he kept a register of his attendance duty and used to submit reports. These were in small bound plain paper register and they used to be shown to the S.P. Security, Shri Marwaha. He said that the book was misplaced when he shifted in the month of December to the President's estate. He added that this book was kept for his own convenience; at the time of T.A. bill it was used; otherwise it was of no use. It was not an official record. He then described the places he went with Shri Giri outside Delhi. He described the visits. He was asked how many persons came to see Shri Giri from the 21st of July to 29th of July, and he replied, that he would not be able to tell that exactly, but he added : "Roughly about forty people during this period." He further said that during his duty hours between 6 and 7 sometimes 4 to 5 people came every day from August 13 to August 16. He said that among those who visited were Shri Krishna Menon, Shri Bhupesh Gupta, Shri Amar Singh Sehgal and Smt. Aruna Asaf Ali, and the persons who visited from 21st to 29th July included Shri Jagat Narain, Shri Yashpal, Shri N. C. Chatterjee and a few M.Ps. He said that he could not recollect any more. He asserted that Smt. Tarkeshwari Sinha never came during his duty hours.

The learned counsel has not been able to give any convincing reason why we should disbelieve this officer. Shri P. Krishna Rao, R.W. 1, is the son-in-law of Shri V. V. Giri. C-243, Defence Colony, was his house, and he said that Shri V. V. Giri conducted his campaign single-handed from this house, although members of his family assisted him. He said that Shri Giri went on tour on the 29th July and completed it on the 13th of August, 1969, but in between he came for a few hours on the 10th and again for a few hours on the 12th. He gave the same version about the duties of the Security Officers, and the procedure followed in the house for receiving visitors. He said that Smt. Tarkeshwari Sinha never came to see Shri Giri from the 20th July to the 16th August, and she did

not come on the 14th August in the morning. He further said that Shri Giri never interviewed anybody in the verandah as it was open to the public gaze and where the Security Officer and probably the driver or some other clerk would be sitting or standing. He further stated that after Shri Giri returned from his tour on the 13th he was continuously with him and he was in attendance on him on the 13th, 14th and 15th; only on the 16th he left in the morning and went to the Parliament House to watch the voting. He further deposed that he knew Shri N. P. C. Naidu and had met him at several places but was not on visiting terms with him. He said that he met him (Shri Naidu) off and on when he went to see members of Parliament from Andhra, and that he first saw him three or four years back at Madras at the house of late Shri V. Rama Krishnan. He denied that Smt. Tarkeshwari Sinha visited sometime in the morning of the 14th, or Shri N.P.C. Naidu came to see Shri Giri at C-243 and could not see Shri Giri. He added that it was impossible ; Shri Naidu would not have been turned away; he never came.

Shri Jai Murti Prasad, P.W. 41, who was one of the gunmen attached to Shri V. V. Giri said that there were three men on duty and they did duty in shifts. He said that he was on duty on the 14th from 2 a.m. to 9 a.m. and after 9 a.m. constable Ram Batta came. He said that he knew Smt. Tarkeshwari Sinha. She did not come to meet Shri Giri while he was on duty.

Constable Ram Batta, R.W. 59, stated that he was on duty on the 14th August from 9 a.m. to 6 p.m. He corroborated Jai Murti Prasad that he took over duty at 9 a.m. on August 14. On this evidence we cannot accept the case of the petitioners that the pamphlet was brought to the notice of Shri V. V. Giri by Shri R. K. Gupta or Smt. Tarkeshwari Sinha or Shri N. P. C. Naidu.

The evidence of Shri V. V. Giri is corroborated by the Security Officers. Besides, we find it difficult to believe that Smt. Tarkeshwari Sinha would have been treated in such a crude and inhospitable manner. There is evidence that visitors were always offered coffee but no coffee was offered to Smt. Tarkeshwari Sinha by Shri V. V. Giri. The story told by Shri Ram Krishan Gupta does not appeal to us. Why should Shri Giri telephone Shri Gupta? No previous acquaintance between him and Shri Giri has been established. If it was Shri Giri's election technique we would have expected evidence to be produced that he telephoned a number of electors from Delhi. The learned counsel for the petitioners said that the witness was an important person and Shri Giri might have been told at Chandigarh that he should contact the witness. But we cannot rely on conjectures.

In order to prove connivance on the part of Shri Giri, the learned counsel also relied on a copy of a letter which Shri Abdul Ghani Dar is supposed to have sent to the respondent. Shri Dar deposed that he wrote a letter to Shri Giri and he produced a copy of it in Court-Ext. P-67. Shri Dar did not address the letter himself but he told his Personal Assistant to put the address of Shri Giri on it and the letter was posted by his P.A. His P.A. has not been produced. Shri Dar further said that he enclosed one printed pamphlet in English with the letter. A copy of this was said to have been forwarded to the Prime Minister of India, New Delhi, and Prof. Humayun Kabir, who is now dead. There is no proof of this. Shri Giri was shown the copy of Ext. P-67 and he said that this letter was never received by him. In cross-examination it was suggested that the letter formed part of the correspondence which was destroyed when Shri V. V. Giri shifted to Rashtrapati Bhavan. We are of the view that it has not been proved that the letter was sent by Shri Abdul Ghani Dar.

The learned counsel then relied on circumstantial evidence to prove that Shri V. V. Giri knew of the distribution of the pamphlet and connived at it. The learned counsel urged that according to Shri V. V. Giri he conducted the election campaign singlehanded and left the entire work of approaching M.P.s to the supporters, and in his evidence also tried to show that he was not associated with the supporters at all. He urged that a necessary inference which flows from these facts is that the electors who actually supported Shri Giri must have been in constant touch with him. He said that this is the only logical conclusion. We are unable to accede to this contention. Before Shri V. V. Giri left for his tour the Congress Party was against his candidature. By the time Shri Giri came back to Delhi on the 13th August, much had already been said and done, and the pamphlet had been printed and distributed. There is no evidence that he was contacted by any of these alleged supporters while he was on tour. The persons belonging to the Congress party, now headed by Shri Jagjivan Ram, were themselves vitally interested in the election of Shri V. V. Giri as it had become a burning issue between the two Congress parties. On this evidence we cannot draw any inference that the supporters must have contacted Shri Giri. The learned counsel then said that some newspapers had carried news about the pamphlet, but there is no evidence that any newspaper printed the whole pamphlet. The pamphlet was referred to in the Hindustan Times, Evening News, dated August 14, 1969, which summarised the letter written by Shri Kanwar Lal Gupta to the Election Commission as follows :

"A Sangh MP Mr. Kanwar Lal Gupta, today addressed a letter to the Election Commission protesting against the alleged corrupt practices by the Prime Minister, Mrs. Indira Gandhi, and her Cabinet colleagues in the Presidential poll. He has charged them with pressurising M.Ps. in favour of Mr. Giri. He has also objected to a pamphlet circulated among the M.Ps. in which certain attacks have been made on Mr. Reddy."

This news item could escape anybody and, therefore, there is no reason to disbelieve Shri Giri that he did not come across this news item. We must, therefore,, hold that it has not been proved that there was any connivance on the part of Shri Giri to the printing, publishing or distribution of the pamphlet.

We have already said, and we may repeat, that there is no evidence whatsoever that there was any intimate connection between Shri V. V. Giri and the alleged distributors. What they were doing in this connection they were doing on their own and Shri Giri cannot be held responsible for their deeds unless, of course, it is established that the result of the election had been materially affected by the distribution of the pamphlet. This question we shall now consider. It is well-settled that the burden of proving that the result of the election has been materially affected is on the petitioners. (see *Vashist Narain Sharma v. Dev Chandra*(1); *Mahadeo v. Babu Udai Pratap Singh*(2); *Paokai Haokip v. Rishang*(3); and *G. K. Samal v. R. N. Rao*(4). The learned counsel, relying on *Surendra Nath Khosla v. Dalip Singh*(5), urged that this Court should draw a presumption, as was done in the case of a rejection of a nomination paper, that the result of the election has been materially affected, from the nature of the pamphlet and the manner of its distribution. He further stressed the fact that the petitioners were not in a position to compel witnesses to disclose their change of view and say for whom they voted. A similar argument was advanced before this Court in *Samant N. Balakrishna*

v. George Fernandez(6). But the learned Chief Justice rejected it thus :

"In our opinion the matter cannot be considered on possibility. Vashist Narain's(1) case insists on proof. If the margin of votes were small something might be made of the points mentioned by Mr. Jethamalani. But the margin is large and the number of votes earned (1) [1955] 1 S.C.R. 509.

(2) A.I.R. 1966 S. C. 824.

(3) Civil Appeal No. 683 of 1968 decided on August 12, 1968.

(4) Civil Appeal No. 1540 of 1969 decided on January 20, 1970.

(5) [1957] S.C.R. 179.

(6) A.I.R. 1969 S.C. 1201, 1225.

by the remaining candidates also sufficiently huge. There is no reason, therefore, for a reasonable judicial guess. The law requires proof. How far that proof should go or what it should contain is not provided by the legislature. In Vashist's case and in Inayatullah v. Diwanchand Mahajan(1) the provision was held to prescribe an impossible burden. The law has however remained as before. We are bound by the ruling of this Court and must say that the burden has not been successfully discharged. We cannot overlook the rulings, of this Court and follow the English rulings cited to us."

The learned counsel invited us to overrule this decision. It is too late in the day to do this. This view was taken very early by various Election Tribunals. It was observed in Rai Bahadur Surendra Narain Sinha v. Babu Amulyadhane Roy(2) :

"In the direct form in which provision is made for this matter in paragraph 7 (1) (c) of the Order there is no scope for interference on the ground that in the opinion of the Commissioners the result of the election might have been affected by the irregularity. This view has been taken in respect of a similar provision to that laid down in paragraph 7(1)(c) in three cases reported in Hammond's Election Cases (1936 edition), namely, in Bulandshahr District (East) 1921 (page 219), Lahore City (M) 1921 (page 469), and Patna West (N.M.R.) 1927 page 535).

Then the Commissioner goes on to say that "it may be that in some circumstances the provision in this rule may operate harshly, where a tribunal may feel that the result of an election may well have been affected by a serious irregularity, but it may be impossible for the petitioner to establish this positively; but we have to interpret and follow the rule as it stands."

Parliament, knowing of the views held by various Commissioners and Judges, have failed to intervene, and it is not for us to legislate.

Let us then see if the petitioners have been able to affirmatively prove that the result of the election was materially affected by the distribution of the pamphlet. They sought to prove this by showing what the impact of the pamphlet on various electors and their reaction was. The reactions, as is to be expected, (1) 15 E.L.R. 219.

(2) Doaba's Indian Election Cases (1935-1950) Vol II; p.368-378.

varied greatly in its intensity. The witnesses describe it variously: It was in bad taste, very derogatory; it was dirty,, scandalous, extremely bad, pernicious, contemptible, character assassination, horrible, vulgar and scurrilous, false and malicious, foul and filthy, unpleasant and foul." Shri Madhu Limaye, M.P., thought that it would affect the chances of his candidate, Shri Giri. Shri Kanwar Lal Gupta, M.P., was in doubt what to do and what not to do. Shri K. S. Chavda, M.P., said that he changed his mind. Shri N.P.C. Naidu, M.P., concluded that members would not vote for Shri Reddy. Shri Shiv Narain, M.P., frankly stated that though he thought that 'such a man should not be the President, yet Shri Rama Reddy convinced him that the pamphlet was totally false and he abided by the decision of the Congress Party Board. Smt. Jayabehn Shah, M.P., felt perplexed right upto the date she cast the vote but failed to positively assert that she voted for some other candidate because of the pamphlet. Shri N. N. Patel, M.P., said that he changed his attitude after reading the pamphlet and adhered to it till the last moment. Shri Mohan Lal Gautam, M.P., does not disclose how he voted. Neither does Shri S. Supakar, M.P., disclose how he voted, although he felt very sad on reading the pamphlet. Shri C. D. Pande, M.P., said that although his faith in the uprightness of Shri Sanjiva Reddy was shaken, it did not affect his vote. Shri P. N. Deb, M.P., felt very much prejudiced against Shri Reddy but did not say that he voted against him because of this pamphlet. Shri Hukam Chand Kachwai, M.P., a member of the Jan Sangh, said that at that time he thought the allegations foul and they did influence his mind, but failed to say who he voted for. Shri Suraj Bhan, M.P., deposed that the pamphlet, so far as he was concerned, affected the directions which had been given by his leaders. Smt. Pushpabahn Mehta, M.P., does not say that the pamphlet affected her vote. Shri Morarji Desai, M.P., described the impact on his mind thus "This would affect an average voter against Shri S. Reddy adversely, because the contents are so shocking and in this country people believe many things without going into them, especially wrong things are believed more easily."

Shri Shri Chand Goyal, M.P., admitted that "it is not that exercised my franchise guided by it." The impact on Shri Ram Krishan Gupta was totally different than intended. He said that after reading the pamphlet "I became a stronger supporter of Shri Sanjiva Reddy because I thought such like posters are not good and should not be issued." Shri R. Muniswamiah, M.L.A., said that the contents prejudiced his mind, and he could not risk not to believe them, but did not disclose how he voted. He, however, admitted that he is a loyal Congressman and has adhered scrupulously to the directives of his party. Shri S. Nijalingappa said that the pamphlet would adversely affect Shri Reddy's chances of success. Shri M. S. Gurupadaswamy, M.P., did not say that the pamphlet affected him although "the motivation was to defame the candidate Shri Sanjiva Reddy and jeopardise his chances of being elected as President." Shri D. S. Raju, M.P., said that he was shocked by the pamphlet but he had always been a loyal Congressman and scrupulously abided by the directives of the party. Shri Patil Putappa, M.P., felt whether he would be doing the right thing by voting for Shri

Sanjiva Reddy after reading the pamphlet but admitted that he had always been disciplined and loyal Congressman and loyal to the directives of the party. Shri Sher Khan, M.P., did not believe in the truth of the allegations in the pamphlet as he had known Shri Sanjiva Reddy personally, but felt that those persons who did not know Shri Sanjiva Reddy might be affected by the pamphlet. Chaudhary A. Mohammad, M.P., said that the pamphlet did affect his mind but he did not view his decision in that light, being a loyal soldier of the Congress. Shri C. M. Kedaria deposed that after reading the pamphlet he could not risk voting for such a candidate for such a high post. Whether he actually voted for Shri Sanjiva Reddy or not is anybody's guess because neither side asked him that question. Shri N. Sri Rama Reddy, M.P., one of the petitioners, had known Shri Sanjiva Reddy for the last 35 years, and was his counting agent. It is not suggested that his vote was affected by the pamphlet. Shri Abdul Ghani Dar, M.P., a petitioner, stated that after the pamphlet was read out to him he thought "that country was sinking and extreme danger has been posed to the democracy." It is, however, quite clear from his evidence that he did not believe that Shri Sanjiva Reddy was a debauch. We have not referred to the evidence of electors from U.P. who deposed to meeting Shri Dinesh Singh at Lucknow because, as will presently appear, much reliance cannot be placed on what they say.

It will be evident from the above analysis of the evidence that apart from two witnesses it is not certain whether the others were so affected by the pamphlet that they changed their mind. Then there are witnesses who say that there was no effect on their voting, either because they knew Shri Sanjiva Reddy or did not believe the allegations or that they were loyal and disciplined members of the Congress Party. Five witnesses were strongly prejudiced but they do not say that this prejudice finally affected their voting or not. Two remained sad or disgusted but failed to disclose whether it had any affect on them. One thought that the party directive was affected. Apparently he was not personally affected. One witness became a firm supporter of Shri Sanjiva Reddy because of the pamphlet. Some witnesses opined that others would get affected, which evidence cannot assist the petitioners in any manner. On this evidence it is difficult to hold that the petitioners have proved that the publication and distribution of the, pamphlet materially affected the result of the election. It only leads to the conclusion that it probably did have some effect but the vast majority of the electors were able to throw off the effect of the pamphlet 'and vote according to their own personal wish or according to the mandate of their party.

There is evidence that there was a great deal of talk about the pamphlet. There was time before voting for the electors to exchange views about the pamphlet and ascertain the truth. Shri Sanjiva Reddy had been the Speaker of the Lok Sabha and was a well-known and leading political personality. There were various other issues exercising the minds of electors, particularly belonging to the Congress party. If in spite of all these factors some were unduly influenced in their thinking, it was for them to come and say so. There was no landslide against Shri Sanjiva Reddy. Two hundred and sixty eight members of Parliament gave him the first preference. Ninety two members of Parliament, who had given first preference to Shri C. D. Deshmukh, gave second preference to Shri Sanjiva Reddy. It is, however, true that if 26 more members of Parliament had voted for Shri Sanjiva Reddy, instead of Shri Giri, the, former would have been elected, Therefore, on the evidence before us, it is impossible to sustain the contention of the petitioners. In the result we hold that it was not been proved that the result of the election was materially affected by the publication and

distribution of the pamphlet.

The learned counsel for the petitioners urged another point in order to impeach the validity of the election. It was said that Shri Dinesh Singh, then Minister for External Affairs, visited Lucknow somewhere round about the 10th of August and exercised undue influence on various members of U.P. Legislature. Shri Dinesh Singh denied having ever visited Lucknow round about that time. He said that he did not go to Lucknow till after the polling date. A number of witnesses have been produced on behalf of the petitioners to establish the visit of Shri Dinesh Singh to Lucknow.

Shri Bansi Dhar Pandey, M.L.A., U.P., P.W. 18, deposed re- garding Shri Giri's visit to Lucknow. He said that Shri Dinesh Singh came to Uttar Pradesh for canvassing for Shri Giri, met him and had a talk. He deposed : "He held a meeting of the leaders in B Block. I was also there. He told us that we should support Mr. Giri." He added : "He said we should support Mr. Giri and thus we should support Prime Minister's view; she belongs to our State." According to him Shri Dinesh Singh then said : "If we do not support the candidature of Mr. Giri, we will not get Central patronage and we would not get the support of the Prime Minister in the general elections and we would not get the party tickets in the elections." He deposed to the receipt of the pamphlet by post. This examination took place before us on the 25th February, 1970, and the learned counsel for the respondent at that stage did not put any question in cross-examination to suggest that as a matter of fact Shri Dinesh Singh never visited Lucknow. It appears that the persons in charge of preparing Shri Giri's case had by then not come in contact with Shri Dinesh Singh and could not ascertain whether he had as a matter of fact gone to Lucknow.

The next witness, Shri Ram Singh, M.L.A., U.P., P.W. 19, gave evidence in the same strain. He said that four or five days after Shri Giri's visit Shri Dinesh Singh came to Lucknow. He also stated that Shri Dinesh Singh said that "if you vote to Mr. Reddy, you will be in difficulty because Central support will not be given to you, the party candidature will not be given to you, patronage of the Central leaders will not be given to you." This evidence was also given on the 25th February, and no question was asked in cross-examination to suggest that Shri Dinesh Singh did not visit Lucknow during this period.

Shri Jagdish Prasad, M.L.A., U.P., P.W., 20, also gave evidence to the effect. Shri Basant Lall Sharma, M.L.A., P.W. 22, also said that Shri Dinesh Singh visited eight or nine days before the polling date.

Shri Rajendra Prapat Singh, M.L.A. P.W. 21, deposed that Shri Dinesh Singh came to Lucknow seven or eight days before the polling and he met him and others in a block of the Councillors' Residence. According to him Shri Dinesh Singh told him that "it is the desire of the Prime Minister that don't vote for the other candidate." The witness further deposed that Shri Dinesh Singh told him that he had come to know from Shri Giri that "I was not prepared to vote for Shri Giri." According to the witness by "the other candidate" Shri Dinesh Singh meant Shri Reddy, the Congress candidate. Shri Dinesh Singh is further alleged to have told the witness that the "Prime Minister is a great leader of the party and her wishes also fell within the discipline". Shri Dinesh Singh is further alleged to have pointed to the witness that the witness came from Rai Bareli which

was Prime Minister's constituency and great help was received from her in election. The witness understood this to mean that if he voted against the Prime Minister then the help available to him from her would not be available.

Shri Ram Pyare Panika, M.L.A., P.W. 37, who was examined on March 2, 1970, gave similar evidence as the earlier witnesses from Uttar Pradesh. He said that Shri Dinesh Singh visited Lucknow about 9 or 10 days before the polling but he could not give the exact date. He said that Shri Dinesh spent two or three days in Lucknow but he could not say where he stayed. To the question : "How do you know that he was there for two or three days?", he replied : "Because he met me once and some friends of mine told me that he also met them two or three days after that." He was asked : "Now look here I put it to you that Mr. Dinesh Singh never visited Lucknow between the 1st and the 16th August and that what you have said is untrue". He answered : "He visited Lucknow and he met me." Other questions were also asked. This is the first occasion that questions were asked with a view to establish that Shri Dinesh did not visit Lucknow between the 1st and the 16th., The next witness, Shri Abdul Salim Shah, M.L.A., P.W. 38, also deposed that Shri Dinesh Singh came about a week before the polling day and he saw him (Shri Dinesh Singh) at Darulshafa where Shri Dinesh Singh addressed the people. He further told that Shri Dinesh Singh talked to him individually. In cross-examination he said that he did not know where Shri Dinesh Singh was living or where he stayed. He met him only once at Darulshafa about noon. He could not remember the names of persons who were present when Shri Dinesh Singh had conversation with him but ultimately said:

"Dr. Sia Ram. Th. Mehram Singh, Mumtaz Khan, Abid Ali, Jogeshwar Dayal and many others." To the question : "I put it to you that between the first of August and the 16th of August Dinesh Singh never went to Lucknow and you could not have met him," he replied : "No. I met him and he came to Lucknow."

The next witness on this point is Shri Mumtaz Mohd. Khan, M.L.A., U.P., P.W. 44, He also gave similar evidence and he said that Shri Dinesh Singh, came to Lucknow about a week before the Presidential election and met him. He described the talk which he had with Shri Dinesh Singh. In cross-examination he said that Shri Abdul Ghani Dar came to Lucknow after he had filed the petition and stayed in 24B Block. in Darulshafa, very near 23 B Block in Darulshafa where the witnesses was staying. When pressed to remember the names of persons who were present when Shri Dinesh Singh addressed the, meeting, he ventured the names of Shri Kamalapati Tripathi and Shri Jagdish Gandhi, and added that perhaps Shri Abdul Salim Shah was also there.

As we said before, Shri Dinesh Singh, R.W. 6, said that between the beginning of August or rather after his return from abroad on 18th July, and the 22nd of August, 1969, he never went to Lucknow and he was in Delhi right upto the 2nd August. He said that his Secretary keeps the diary of his engagements and consults him before making any appointment unless he tells the Secretary ahead that someone is going to see him. He said that whenever he goes out, whether on an official or a private tour, a tour programme is issued, and it is indicated in the tour programme whether the visit is official or private and it has the list of people to whom it is circulated. He further stated that whenever he goes to Lucknow he stays with the Governor in the Raj Bhavan or in the State Guest House and he usually goes by train and sometimes by plane.

The diary kept by the Private Secretary was produced and shown to the counsel for the petitioners, and the witness was cross-examined in detail about the diary and the way it is maintained. To the question : "I put it to you that you were in Lucknow on Sunday the 10th August", he answered:"

No. it would not be correct because I did not go out of Delhi."

This date was apparently chosen by the learned counsel because in the diary the page of August 10, 1969, was blank. It was further suggested that the witness perhaps went by car towards the evening of 9th and reached Lucknow by the morning and then proceeded to Partapgarh for three hours and then back to Lucknow by 12 O'clock, and after spending six or seven hours in Lucknow he took the car and came to Delhi. To this suggestion he said that the distance between Delhi and Lucknow involved a very long journey. He added : "This is a hypothetical question in respect of time and I would have to be more sure about it." The witness further said that he thought that he attended a tea party at Mysore House given by the then Governor of Mysore on August 10. We will presently show that this version of his attending the party on August 10 is corroborated by other evidence. The respondent also produced a number of M.L.As. from U.P. to prove that Shri Dinesh Singh did not visit Lucknow between the 1st and the 16th. They are Shri Syed Ali Zaheer, M.L.A., R.W. 9, Shri Genda Singh, M.L.A., R.W. 12, and Shri H. N. Bahuguna, R.W. 28, who was the General Secretary of the U.P. Congress Committee in 1969. Shri Bahuguna said that Shri Dinesh did not visit Lucknow before the poll in August. He said that he knew it for certain that Shri Dinesh Singh did not visit Lucknow between the 1st and the 17th August because had he visited Lucknow he was sure to hear from Shri Dinesh Singh. The witness added : "He is a kind friend who keeps me informed of his tour programme even here. I always receive his tour programme and, therefore, if he had come to Lucknow I would have surely got his tour programme through dak or if it was a hurried programme a telephonic call that Mr. Dinesh Singh will be in town and in view of my plastered leg, if he were to come to Lucknow he would have certainly visited me as he did before." It was put to him : "If I say that Mr. Dinesh Singh did visit Lucknow between the 1st of August and the 14th of August, will it be correct ?", he answered : "Totally incorrect." Shri Abid Ali, M.L.A., R.W. 33, deposed that he had not met Shri Dinesh Singh personally. He was asked: "Mr. Abdul Salim Shah has deposed before this Court as a witness and stated that Mr. Dinesh Singh came to Lucknow in August '69 and you were present alongwith him and others when Mr. Dinesh Singh and he had a conversation. Is it correct ?" He answered : "No it is quite wrong." He stuck to this position in cross-examination.

Shri Rao Rafay Khan, M.L.A., R.W. 37, said in cross- examination that he could not say whether Shri Dinesh Singh went to Lucknow or not and he said that he had not yet met Shri Dinesh Singh. Further he did not hear of Shri Dinesh Singh going to Lucknow in the month of August. Shri Kamalapati Tripathi, R.W. 61, who was the President of the U.P. Congress Committee at the relevant time also stated that he was in Lucknow between the 1st of August and the 16th of August and that during this period, as far as he could recollect, Shri Dinesh Singh did not visit Lucknow. He further said : "Usually when he comes to Lucknow, he gives me a ring that he is coming to Lucknow, and after reaching Lucknow he informs me of his arrival there." The evidence of Shri Mumtaz Mohd. Khan, R.W. 44, whom he knew, regarding Shri Dinesh Singh's alleged visit to Lucknow was- put to him where he had said that Shri Kamalapati Tripathi was one of the persons present in the meeting; the witness replied : "No meeting was held. Neither I was present anywhere. This is a false

statement."

Shri I. K. Gujral, R.W. 40, attended Shri G. S. Pathak's party on Sunday the 10th August and produced a letter dated August 9, 1969, signed by Shri G. S. Pathak and addressed to Shri I. K. Gujral, inviting him to tea at Mysore Bhavan. Shri Gujral said that Shri Dinesh Singh was present there alongwith some others, including Shri Om Mehta, Shri K. C. Pant, Dr. Ram Subhag Singh, Shri M. P. Bhargava and a few others, and also Shri Kanwar Lal Gupta, M.P. Shri G. N. Mathur, R.W. 14, who has been in the government service for the last 30 years and was Private Secretary to Shri Dinesh Singh said that he :fixed up appointments and tour programmes and looked after coordination work in the Minister's office. He had been Private Secretary to Shri Dinesh Singh since 1962. He produced the diary of 1969 and said that it had been kept by him and the name of the diary was "Rampart Index Diary by Thakar & Co." This particular diary was supplied by the Ministry of Commerce when he was there- and when Shri Dinesh Singh was Minister of Commerce. He also produced the diaries of 1966, 1967 and 1968. It is not necessary. to go into his evidence in detail but it is quite clear from his evidence that he keeps the diaries in regular manner and it may be that some.time he may rub out or score out an engagement which has been cancelled, otherwise most of the engagements are put in the diary. He then gave the procedure for making a tour programme. He admitted that if some appointment is made by the Minister at his house and the Personal Assistant who attends the house does not inform him about it, it would not be found in the diary. He was asked : "If the Minister goes out on tour out of Delhi, is there 'any entry in your diary ?" He replied :

"Sometimes I do make, but I keep a tour register and it is used for tour purposes." He was asked : "If he (the Minister) decides to go on tour, let us say, suddenly in the evening, will a tour programme be issued?" He replied : "If it is possible. We Will contact the District Magistrate of the place he is visiting to inform him that the Minister is arriving at that place, by telephone. If the Minister is likely to stay there for a day, we issue a programme, although it is afterwards." He was asked : "If he is coming back immediately, no programme will be issued ?" He replied : "No. But it is my responsibility to inform the District Magistrate that he is coming."

The witness produced a file containing the tour programmes between the 22nd of February, 1969, and the 22nd December, 1969. He said that if the Minister changes his route while he is on the way, then if he gets information he would issue a revised programme. He pointed out that according to the schedule date of return the Minister was supposed to return on Saturday, the 19th July, but he returned in fact on the 18th July, a day earlier, and he issued a revised programme on the 17th of July. After looking up the tour programmes file he said that Shri Dinesh Singh went to Lucknow only on the 22nd August and he then went by plane and returned by plane and the tour programme was issued.

In cross-examination the learned counsel for the petitioner tried to show that the diary was not absolutely complete. In reply to the learned counsel the witness said : "So far as the prior engagements are concerned, if an engagement has not been fulfilled, either it would be, rubbed off or scored out, but whatever engagements appear in the diary, they would indicate they have been fulfilled." He further admitted that he did not always score out the entry specially in the case of the

national days of the Embassies, because he had to inform the Chief of Protocol that the Minister would not be able to attend the reception and he has to explain the Minister's inability to attend to the Ambassador concerned. He added : "Therefore, to remind myself, I do not cancel such type of entries from the diary." The witness further admitted that the tour programme consisted of loose sheets tagged together as these programmes were cyclostyled and they are not entered in any bound register, but he said that when T.A. bill is prepared it would indicate the visits of the Minister. He denied that any second diary was maintained at the residence under the control of the Personal Assistant. He further said that even if the Minister wants to go and meet someone out of Delhi in his personal capacity, as a matter of security if the security man is informed then he will accompany him and even if he goes to a picture the security man would sit outside the picture house.

We are satisfied that nothing has been brought out in cross-examination which would destroy the evidence of the Private Secretary that most of the engagements of the Minister appear in the diary and whenever he goes out a tour programme is framed and issued.

Shri Ram Nath Singh, constable, R.W. 36, who had been attached to Shri Dinesh Singh for security purposes as guard for the last four years was posted at Shri Dinesh Singh's residence. He said that there was no limit to the time he served as a guard at a time but usually it was for six hours. He described the procedure by which the revolver and the cartridges are transferred to the man who comes on duty. If the Minister goes out of Delhi for more than 24 hours the revolver and the cartridges are deposited in the security line. When the Minister is away the gunman still attend the house. He produced the Roznamcha which was maintained in the year 1969 and he said that he would make an entry in the Roznamcha as to whether Shri Dinesh Singh was in Delhi or not. He showed the entries from the first of August to the 16th. He pointed out various entries. The first entry was dated 11th August. This entry would show that the Minister spent the night of the 10th in Delhi. Various such entries were pointed out. He was asked to see if there was anything to show that the Minister was not in Delhi during this time, and he answered : "There is no entry showing that he was away from Delhi." The counsel brought out the entries on the 22nd of August to show that an entry was made when Shri Dinesh Singh went to Lucknow. In the entry it is recorded inter alia that "at 7 a.m. the Minister is in the house". The entry at 3 O' clock shows that "the Minister started for Palam Airport; he would go by plane from there to Lucknow. Signed Ravi Bhan Singh." He stated that the gunman on duty went with the Minister upto Palam airport and stayed there till the plane took off and that was why he would know that he was going to Lucknow by plane. Nothing useful was brought out in cross-examination and we are satisfied that the Roznamcha was kept in the regular course of duty and the entries in it support Shri Dinesh Singh's version that he did not go to Lucknow on the 10th August, or between the 1st August and the 16th August. If there had been any truth in the version given by the petitioners it would not have been difficult for them to produce evidence either from the railway records or the records of the Indian Airlines to show that reservation was made on behalf of Shri Dinesh Singh and he travelled to Lucknow and back. Further in those days the local papers, if not the national papers, would at least have carried some news items about the visit of Shri Dinesh Singh to Lucknow as it was a visit alleged to be for election purposes, and according to the petitioners he had met a number of persons openly. Further the evidence of the petitioners' witnesses does not fix the date of the visit. It was the blank page in the diary which led to the suggestions about that day in cross-examination.

We are satisfied from the evidence which we have extracted above that Shri Dinesh Singh did not visit Lucknow on the 10th of August or any other day thereabout and the case of the petitioners that Shri Dinesh Singh visited Lucknow is not true.

We have already mentioned that it was alleged in the petition that Shri V. V. Giri repeatedly stated at various places that "a man of character and integrity should have been selected" and he, in well-guarded language, was stating that Shri Reddy was not a man of character. Shri V. V. Giri denied these allegations and stated that throughout his statements he adhered to the stand as a candidate for the office of the President. The petitioners produced 8 witnesses to substantiate this charge. It is common ground that Shri V. V. Giri visited Lucknow during his election tour. Lucknow was his first halt and he addressed a meeting at Darulshafa. There is dispute as to what Shri Giri said at the meeting and as to whether he met M.L.As. individually or in groups. The eight witnesses mentioned are : Shri Bansidhar Pandey, P.W. 18, Shri Ram Singh, P.W. 19, Shri Jagdish Pershad, P.W. 20, Shri Rajendra Prasad, P.W. 21, Shri Basant Lal Sharma, P.W. 22, Shri Ram Pyare Panike, P.W. 37, and Shri Abdul Salim Shah, P.W. 38. These witnesses also deposed to Shri Dinesh Singh's visit to Lucknow and we have disbelieved their version. In these circumstances we must view their evidence with extreme care and caution. It will be noticed that the witnesses have given different versions as to what Shri V. V. Giri said.

Shri Bansidhar Pandey, P.W. 18, Shri Jagdish Pershad, P.W. 20, and Shri Basant Lal Sharma, P.W. 22, said that Shri Giri told them that they should vote for him in the Presidential election. P.W. 19, Shri Ram Singh's version was : "At that time he asked us that I am the candidate of the, Prime Minister and I must be voted for the Presidential Election and she has supported him and therefore I must get the votes." Shri Ram Pyare Panike, P.W. 37, struck a different note. According to him Shri V. V. Giri said : "He told us that we should vote for him because he told us that he was also the Governor of other States and he was also Vice- President. So he told us that a man like him should be voted and we should vote in favour of Mr. Giri." He further deposed that after the meeting he and three or four M.L.As. met Shri Giri separately and he told them the same thing and in addition said : "If you want to progress India a man like me should be voted."

P.W. 38, Shri Abdul Salim Shah's version is that Shri V. V. Giri said that he had been the Vice President and also a Governor on behalf of the Congress and "I have spent the whole of my life in the Congress in the companionship with Mahatma Gandhi. I deserve it more that I should be elected as the President of India." He added that at a personal meeting along with Shri Mumtaz Khan Shri Giri asked us whether we should vote for him.

The last witness on this point, Shri Mumtaz Khan, P.W. 44, gave the most detailed version. According to him Shri Giri "appealed to the members of the Assembly to vote for him. He said that he has held very high offices. He was the Vice-President of India. He was also the Governor of U.P.; he has been doing social service all throughout his life and he was a very fit candidate for the Presidentship of India. Besides this, he said that the other candidates are not as good as he is. Besides, he also said this thing that the Congress had done a great blunder in nominating Mr. Sanjiva Reddy as its candidate. He said all these things." At a personal meeting with him and two or three friends, according to this witness, Shri Giri "appealed to us that you vote for me and besides

this he said that Sanjiva Reddy is not a suitable candidate. There are so many spots on his character and the Congress High Command has done a great, blunder in nominating him as its candidate. Besides this, he said you see my services and all these things."

It will be noticed that Shri Mumtaz Khan, P.W. 44, is the only witness who stated that reference was made to Shri Sanjiva Reddy, and Shri Ram Singh, P.W. 19, is the only witness who mentioned that a reference was made to the Prime Minister.

Shri Daphatry, the learned counsel for, the respondent, put all the above statements to Shri V. V. Giri. Shri Giri categorically denied meeting M.L.As. individually or in small groups. He said that all his addresses were on the basis of the statement that he issued on July 13, 1969. He stated that at no stage he said that he was supported by the Prime Minister either at Lucknow or elsewhere. He further deposed that he never referred to the "other candidates" and whatever he stated was about his own qualifications. He denied having referred to Shri Sanjiva Reddy and also denied having ever said that Shri Sanjiva Reddy was not a suitable candidate, and further, according to Shri Giri, it was absolutely false that he said that "there are so many spots on his character and the Congress High Command has done a great blunder in nominating him as its candidate." He admitted that he said about himself, his qualifications, but there also he was very guarded. On the respondent's side Shri Shivanand Nautiyal, M.L.A., R.W. 26, supported Shri Giri's version of the meeting. Shri Nautiyal admitted that he was an active supporter of Shri Giri. According to him, Shri Giri said that he was an independent candidate and told everything about his work and nothing more: in particular he did not, in the course of what he said, refer to Shri Sanjiva Reddy, nor did Shri Giri say that he was Shrimati Indira Gandhi's candidate. According to the witness, after the meeting Shri Giri left, accompanied by 17 or 18 people, and that no talk took place between them and Shri Giri. In cross-examination he stated that Shri Giri talked about his work and his visit to many countries and he explained everything but did not discuss political issues with them.

Another witness, Shri Ashraf Ali Khan, M.L.A., R.W. 27, gave an account of Shri Giri's talk to them. He said : "He talked about his candidature that he was seeking his election as an independent candidate, because he considered that the post of the President was of such a stature that a non-party man should seek election, and that he had always stood for the common man and worked for him throughout his labour movement, and he was seeking the vote of all persons who believed in the ideology of the common man." He further added that not a single word was said about Shri Sanjiva Reddy or that he was a candidate put up by Smt. Indra Gandhi. The witness admitted that he was elected on the Congress ticket; he only went to the meeting because it was held in the hostel compound. He said that other congressmen also attended the meeting because it was held in the hostel. The statement (if Shri V. V. Giri, dated July 13, 1969, is exhibited as P. 66A. Our attention was invited by the learned counsel for the petitioners to the sentence in the statement : "I would only say that the candidate selected for the highest office should possess character, integrity, patriotism, experience, record of service and sacrifice. I feel in all modesty I could claim to have these attributes in some measure." We are unable to appreciate how this sentence makes it probable that Shri Giri would mention Shri Sanjiva Reddy and say something about his character at Lucknow. Another passage in the statement which was pointed out was : "The highest office of the land must be one that is above party politics. While the majority party has every right to choose its nominee, in

a democracy care should be taken to see that the candidate so selected enjoys, as far as possible, the confidence of other groups also. I am deeply pained by the recent events that have tended to lower the dignity and moral authority of this august office." We are again unable to see how this makes it more probable that Shri Giri would attack the character of Shri Sanjiva Reddy at Lucknow.

Further, on August 1, 1969, it was not definitely known whether Smt. Indira Gandhi would support the candidature of Shri Giri. There is no evidence of Shri Giri having met the Prime Minister except on July 20, 1969. Shri Giri said that he had not spoken either to the Prime Minister or to any Minister before he announced his candidature. He further stated that he saw the Prime Minister on July 20, 1969, when she came to see him at a ceremonial function when he was leaving the Rashtrapati Bhavan and she had come to say "good-bye" and he said "good-bye" to her. He categorically stated that they did not meet each other any time between the 20th July and the 16th August, 1969.

We are of the 'view that Shri Giri's version is preferable to the version given by the petitioners in so far as there is any conflict, and therefore we hold that the allegations made in the Petition in this respect have not been substantiated.

We may next deal with the allegations in paragraph 13 (c)

(iii) of the petition to the effect that Shri Fakhruddin Ali Ahmed and Shri Yunus Saleem threatened Muslim voters that Shri Sanjiva Reddy was in fact a candidate of the Jan Sangh Party and that if he was elected the fate of the Muslim community in India will be in danger and in constant threat of extinction. An instance was given of the conversation which took place between Shri Yunus Saleem and Shri Abdul Ghani Dar, petitioner. The following particulars were supplied regarding the allegations in this sub-para Date Name of person threatened Place where threatened Shri Fakhruddin Ali Ahmed 11.8.69 Sh. Abdul Ghani Dar, M.P. At his residence on Telephone 11.8.69 Sh. Sher Khan, M.P. At his residence by Telephone 11.8.69 Chaudhary A. Mohammad At his residence on telephone M.P. Shri Yunus Saleem 11.8.69 Sh. Abdul Ghani Dar, M.P. In the Central Hall of Parliament 11.8.69 Sh. Sher Khan M.P. In the Central Hall of Parli-

ament 11.8.69 Chaudhary A. Mohammad In the Central Hall of Parl-

M.P. iament The particulars stated above were stated to be true to information received by Shri Abdul Ghani Dar from Shri A. Mohammad, M.P., and Shri Sher Khan, M.P., and were believed to be true to his knowledge in so far as they related to himself.

Shri Sher Khan, M.P., P.W. 51, deposed that perhaps on the morning of August 11, 1969, Shri Fakhruddin Ali Ahmed rang him up and told him on the telephone that all Muslims together will vote for Shri Giri and that he should side with them. The witness replied that "I am a man of the Organisation and as an old Congressman I cannot move away from the official candidate and vote for another." Shri Fakhruddin Ali Ahmed then told the witness :

"He told me if I want to go along alone I could do so but they all together have unanimously decided to support Mr.. Giri. You may do whatever you like alone, but I may remind you of one thing that with the return of Mr. Sanjiva Reddy on election would be posing a danger for the Muslims and also for the Muslim Community, there is a compromise between him and the Jan Sangh. In future it is possible that he may obliterate the names of the Muslims."

The witness in reply said that he could not agree. The witness, further stated that nothing more was said on the telephone and Shri Fakhruddin Ali Ahmed said that they shall meet in the Central Hall. The witness further deposed that Shri Fakhruddin Ali Ahmed met the witness at noon time in the Central Hall on the same-day, and is alleged to have said, inter alia, that "as the entire ruling party is supporting Mr. Giri, you will not be put in future either on the Delegations, or on the Committees or in other Nominations."

Then the witness deposed that Shri Yunus Saleem gave him a ring on the same day and repeated almost the same thing and, further Shri Yunus Saleem met him in the Central Hall and said : "If I am differing from him, I might vote for Mr. Reddy. In that case that will not be good for me in future." In cross-examination he said that before he gave his evidence in Court he did not have any conversation with Shri Abdul Ghani Dar or anyone on his behalf about what the witness was going to depose to in this Court. He, however, said later that he had informed Shri Abdul Ghani Dar about the conversation which the witness had with Shri Fakhruddin Ali Ahmed on the telephone, and similarly he informed Shri Abdul Ghani Dar about the entire conversation which he had with Shri Yunus Saleem. He denied the suggestion that Shri Fakhruddin Ali Ahmed had no conversation with him in the Central Hall and he also denied the suggestion that Shri Yunus Saleem had no conversation with him on the telephone or in the Central Hall. He further said that he had told Shri Mishra, who is the leader of the Congress Party in the Rajya Sabha, about what Shri Fakhruddin Ali Ahmed had told him.

It will be noticed that in the particulars Shri Sher Khan is not stated to have met Shri Fakhruddin Ali Ahmed in the Central Hall and it is not stated that Shri Yunus Saleem had telephoned to him.

Chaudhary A. Mohammad, M.P., P.W. 52, deposed that Shri Fakhruddin Ali Ahmed telephoned him on the 10th or 11th of August and told him : "It has been decided to support Mr. Giri in the election and also that in this the Muslims stand to gain and if Mr. Sanjiva Reddy wins the interest of the Muslim community will be in danger." The witness plainly told Shri Fakhruddin Ali Ahmed that he was a soldier of the organisation and he could not go against the decision of the Congress. He then added that he was with Shri Sher Khan when Shri Fakhruddin Ali Ahmed addressed Shri Sher Khan and was saying that "they had decided to vote for Mr. Giri and therefore we should obey this final decision and also that this was in the interest of the Muslims." According to the witness Shri Fakhruddin Ali Ahmed was threatening Shri Sher Khan by saying: "We distribute tickets and that he will not be given any ticket and that he was retiring." We may mention that Shri Sher Khan was due to retire from Rajya Sabha as Member on April 2, 1970.

Regarding Shri Yunus Saleem the witness deposed that he met Shri Yunus Saleem at a breakfast and talked about the election and Shri Yunus Saleem said the same thing but he did not talk to him on the telephone about the election. He further stated that he had met Shri Yunus Saleem a number of times in the Rajya Sabha lobby and in the Central Hall and they talked about election and the reasons that Shri Yunus Saleem gave for supporting the respondent were that "if Mr. Sanjiva Reddy is elected the government will be upturned and that Mr. Sanjiva Reddy was a very bad man. And there were some pamphlets .which he had distributed a copy of which was given to me also." He denied the suggestion that there was no talk between him, and Shri Yunus Saleem of the nature deposed to by him. He admitted that he belonged to the Congress party of which Shri Nijalingappa is the President.

In the particulars it is not stated that Chaudhary A. Mohammad overheard the conversation between Shri Sher Khan, M.P., and Shri Fakhruddin Ali Ahmed. Further, Shri Sher Khan does not say that Shri Fakhruddin Ali Ahmed threatened and said "We distribute tickets and that he will not be given any ticket and that he was also retiring." The last witness on this point is Shri Abdul Ghani Dar, M.P. He deposed that Shri Fakhruddin Ali Ahmed approached him on the telephone on the 11th August in the evening and he told him that "he was told by Mr. Yunus Saleem that in spite of having been told by him (Shri Yunus Saleem) I had decided not to side with Mr. Giri and Shrimati Indira Gandhi." The witness further deposed that Shri Fakhruddin Ali Ahmed said that "it meant that in spite of my being a Muslim I was an enemy of the Muslims." He further said that he told Shri Fakhruddin Ali Ahmed that this was wrong. According to the witness, he addressed a letter to Shri Fakhruddin Ali Ahmed and also to all the Muslim Members of Parliament on this. The letter is Ext. P 68. He further deposed that Shri Yunus Saleem gave the pamphlets to him, took him aside and told him four things; the two relevant to this point being (1) that Shri Sanjiva. Reddy was in collusion with the Jan Sangh, and (2) that if Sanjiva Reddy wins it will be a victory for Jan Sangh and the Muslims will stand eliminated. According to the witness he replied that "this is also wrong that by the return of Mr. Sanjiva Reddy there will be any ,danger for the Muslims."

The letter, Ext. P-68, was alleged to have been written by Shri Abdul Ghani Dar on August 13, 1969, and the following, passage may be extracted :

"Brothers it is said that Muslim League and Syed Baderuja are openly with communists. It is also said that Mr. F. A. Ahmed and Mr. Yunus Saleem are canvassing with Muslim members to defy the mandate of the congress president for congress Shri S. Sanjiva Reddy because Jan Sangh is on his side..... Now what right the communists or my brother Ahmed and Saleem have to canvass Muslims in the name of Islam and Muslims of India. It is very sad that they are playing a very dangerously game." (emphasiz supplied.) This letter does not support Shri Abdul Ghani Dar that Shri Fakhruddin Ali Ahmed and Shri Yunus Saleem canvassed with him because the sentence begins : "It is also said". In other words he seems to have heard from some source, that Shri Fakhruddin Ali Ahmed and Shri Yunus Saleem were canvassing the Muslim Members. If his evidence is true we would have expected him to have stated in the letter that Shri Fakhruddin Ali Ahmed and Shri Yunus Saleem had approached him. Further what is attributed to them is something milder

though, objectionable. We have already mentioned that it was brought out during the cross-examination that there was conflict between the evidence that he had given regarding Shri Yunus Saleem taking him aside and his statement in sub-para 13 (b) (iv) of the petition in which it is stated : "As a single instance Shri Yunus Saleem approached Shri Abdul Ghani Dar, Member of the Parliament, one of the petitioners herein and talked to him in this behalf as stated earlier. This was said in presence of a number of Members of Parliament." Shri Abdul Ghani Dar said: "I have even now not denied that where I was taken no other Members were present." This answer seemed to us surprising.

Further it seems to us that Shri Abdul Ghani Dar had been trying to collect and collate evidence right from the beginning and his statement does not inspire confidence. He went to Lucknow and his visit apparently resulted in the story of the visit of Shri Dinesh Singh to Lucknow. The tape record of his conversation with Shri Jagat Narain, which took place after the election, also lends strong support to this view. It is true that Shri Jagat Narain tried to contact Shri Abdul Ghani Dar in order to dissuade him from filing the election petition. Shri Jagat Narain had first spoken to Shri Abdul Ghani Dar's wife and, according to Shri Abdul Ghani Dar, Shri Jagat Narain had created an im-

pression on his wife that there would be peril to Shri Abdul Ghani Dar in case he insisted on filing the petition. Shri Dar's wife did not give evidence. The tape record of the conversation between Shri Abdul Ghani Dar and Shri Jagat Narain clearly indicates that whereas Shri Jagat Narain was trying his best to make out that in his conversion with Shri Abdul Ghani's wife he had not held out any threat to the life of Shri Abdul Ghani Dar, the latter was trying his best to get an admission to that effect from Shri Jagat Narain on to the tape.

Shri Fakhruddin Ali Ahmed denied that he telephoned Shri Sher Khan, M.P., as alleged by Shri Sher Khan in his evidence. He further denied that he had any conversation with him in the Central Hall on the 11th of August, as alleged by him. He further denied that he telephoned Chaudhary A. Mohammad regarding the election or any other matter. He maintained that he had no talk with him in his office or in the Central Hall of Parliament. He further said that he knew Chaudhary A. Mohammad but he did not visit him and they did not meet very often. He further characterised Shri Abdul Ghani Dar's evidence as absolutely incorrect that he approached him on the telephone. He added that he had never approached him regarding the election matters. He said that he did not receive any letter from Shri Abdul Ghani Dar. In cross-examination he stuck to the statement he had given in examination-in-chief regarding Shri Sher Khan, Chaudhary A. Mohammad and Shri Abdul Ghani Dar, and non-receipt of the letter, Ext. P 68. He denied that during' the course of the Presidential election any propaganda along the lines suggested by these three witnesses was carried on by him among the Muslim Members of Parliament.

Here again there is direct conflict between the witnesses. We have already held that the particulars given by Shri Abdul Ghani Dar were given on pure guess work and the verification he appended to the particulars was not true. Even on this aspect of the case the evidence given in Court is different from what is stated in the particulars. The learned-counsel for the respondent read the statement of Shri Sher Khan to Shri Yunus Saleem and asked him whether the deposition of Shri Sher Khan was correct regarding the telephonic call or about the meeting. He replied : "No, it is not correct. I had a talk with him about the Presidential election but when he informed me that he is committed to Shri Nijalingappa and that he was working for Shri S. Reddy, the question of any further talk did not arise." The witness further stated that no communal issue was involved in the election and he did not approach Shri Sher Khan on communal considera-

tions. The learned counsel then read out the statement of Chaudhary A. Mohammad to Shri Yunus Saleem and he replied :

"I am sorry this is absolutely incorrect. It is correct that he came to me at breakfast more than once but no talk regarding Presidential election took place between him and me." He said that Chaudhary A. Mohammad was supporting the Congress Party of which Shri Nijalingappa is the President and he was working for Shri Sanjiva Reddy. Similarly the learned counsel read out the relevant evidence of Shri Abdul Ghani Dar and to the question : "Is it correct?", Shri Yunus Saleem answered : "Except this that I had a talk with Mr. Abdul Ghani Dar about the Presidential election in the Central Hall every part of it is incorrect."

Shri Yunus Saleem described the talk thus :

"I wanted to know his views about the Presidential election because he claimed to be an independent member of the Parliament who did not belong to any political party. We discussed several points and he said that he had decided to support Mr. S. Reddy and he also mentioned that the late Prof. Humayun Kabir was also of the same view that Mr. S. Reddy should be supported. Therefore I said that he may consider that whether it would be advisable in the interest of democracy and socialism to support Mr. S. Reddy or Mr. Giri. He said that he would think over it and also discuss with Prof. Humayun Kabir. Except this no talk between myself and Mr. Abdul Ghani Dar took place about the Presidential election."

In this connection reference may be made to the statement of some other Muslim Members of Parliament. Syed Ahmed Agha, M.P., R.W. 10, said that Shri Sher Khan was collecting signatures for Shri Sanjiva Reddy. He further stated that no meeting of the Muslim Members of Parliament was held at about that time in connection with the Presidential election. To the question : "Did any Minister of the Central Government contact him and told him what he should do about voting, otherwise the Muslims would be wiped out,?", he replied : "Certainly not."

Shri P. M. Syed, R.W. 13, said that he did not hear any communal cry raised by Shri Fakhruddin Ali Ahmed in the context of the election nor was any communal cry raised by Shri Yunus Saleem during those days.

It seems to us highly improbable that Shri Fakhruddin Ali Ahmed and Shri Yunus Saleem would approach these three witnesses and canvass support for Shri Giri on the ground that the fate of the Muslim community would be in danger. It seems to be very unlikely that if Chaudhary A. Mohammad was present along with Shri Sher Khan in the Central Hall, Shri Fakhruddin Ali Ahmed would not talk directly to both of them because according to them they both had already been contacted over the telephone. If Shri Fakhruddin Ali Ahmed wanted to supplement the talk he already had on the telephone it would have been natural for him to have talked to both of them. Moreover, if it was true some mention of it would have been made in the particulars. It seems to us that the evidence on this point is too unsatisfactory to be believed without corroboration from independent sources. In view of these considerations we hold that the allegations in sub-para 13 (c) (iii) have not been proved. Only a few minor points now remain. No evidence was led in connection with the allegation made in sub-para (i) of para 13 of the petition. It was alleged, to state briefly, that the supporters of the returned candidate, Smt. Indira Gandhi and other Ministers, had misused their position for furthering the prospects of the returned candidate by telephoning large number of electors from their ministerial telephones. No witness was produced to prove these allegations. Telephone records and bills were summoned and produced in Court but no effort was made to connect the telephone records with the Ministers and the electors, who are alleged to have been contacted. There is no evidence regarding the electors who are alleged to have been called by the above named Ministers at their official residences and offices. No evidence was led on the allegation that Shri V. V. Giri sounded one of the Ministers to influence any particular electors who were found not amenable to his influence or persuasions. We must hold these allegations not proved.

Regarding the allegations in para 13 (c) (v), para 13 (c)

(vi) and para 13 (c) (vii), we did not allow any evidence to be taken on the points because we were of the view that even if they were accepted, the allegations did not amount to undue influence. It seems to us that the threats indicated in those parts were too fanciful and remote and they could not constitute any attempt to interfere with the electoral rights of the electors.

It was stated in para 13 (c) (xiii) that "on August 6, 1969 the U.P. Congress Committee President, Shri Kamalapati Tripathi and Shri C. B. Gupta, Chief Minister, jointly addressed a meeting of the Congress M.L.As. and appealed for solid backing for Shri Reddy. But when undue influence of the scare reached them they changed their stand. On August 13, 1969, Shri Kamalapati Tripathi also pleaded for freedom to vote. The same was the fate of the other State leaders." According to Shri Kamalapati Tripathi, R.W. 61, he had issued an appeal, Ex. P 74, on August 12, 1969, to all Congress legislators of the U.P. State Legislative Assembly, asking them to cast their vote in favour of Shri Sanjiva Reddy. He gave reasons in Ext. P 74 why this should be done. But then he changed his stand. He gave the following explanation in answer to the question : "After issuing this appeal did you change your position in relation to the Presidential election ?"

"Well, I may say that I made a choice. The letters to the congress president of that time, Shri Nijalingappa, written by Jagjivan Ram and Fakhruddin Ali Ahmed, were published in the papers on the 12th of August, if I remember the date correctly, in which the demand to sanction the freedom to vote was published. I also made, a request to the congress president to allow this freedom of vote in view of the serious situation developing within the organisation regarding this question, and I requested that by, sanctioning that freedom of vote, perhaps, it would be possible to maintain the unity and avoid disruption in the organization."

He further added "It was, perhaps, on the 14th evening. And then I saw very clearly that on this issue a split was going to take place in the organization. So, when the organization was going to be divided, as I saw it, I thought that I should make a choice of my own self as to where I should belong, and I made that choice."

It seems to us that no connection has been proved between the change in his stand and the alleged scare mentioned in sub-para 13 (c) (xiii).

In conclusion we hold that the pamphlet was sent by post. Further, the pamphlet was distributed in the Central Hall of Parliament. This distribution itself constitutes undue influence within s. 18(1) (a) of the Act. It is, however, not proved that this pamphlet was distributed by workers of the respondent, or with the connivance of the returned candidate. We further hold that it has not been proved that the result of the election has been materially affected by the distribution of the pamphlet. The rest of the allegations either do not amount to undue influence or were not proved.

Issue No. 7 in E.P. No. 1/1969, Issue No. 9 in E.P. No. 4/1969 and Issue No. 11 in E.P. No. 5/1969 303Sup. CI(P)/71 What relief, if any, are the petitioners entitled to? The petitioners are not entitled to any relief as no ground has been made out for declaring the election of the respondent to be void.

In our order dated May 11, 1970, we had directed that the parties will bear their own costs. We passed this order regarding costs because we were satisfied that the pamphlet had been sent by post and distributed in the Central Hall and this justified the petitioners in bringing the two main petitioners. Most of the evidence which was led in Court dealt with the question of the distribution of the pamphlet. Further, as' pointed out in the judgment, a number of witnesses have not told the whole truth. As a matter of act we were distressed to see truth being sacrificed at the altar of political advantage by these witnesses. Bhargava, J.-These four election petitions all challenge the election of the President of India for which polling was held on the 16th August, 1969, and the result of which was declared on the 20th August, 1969. The petitioners in Election Petitions Nos. 1 and 3 of 1969 were candidates at the election. The nomination papers of both these petitioners were rejected by the Returning Officer. The petitioners in the other two Election Petitions Nos. 4 and 5 of 1969 were electors for the election of the President. The successful candidate, Shri V. V. Giri, is the sole respondent in Election Petitions Nos. 1, 4 and 5 of 1969, while, in Election Petition No. 3 of 1969, he was impleaded as respondent No. 2 and the Union of India, through the Election Commission, as respondent No. 1. In this judgment, the reference to respondent will be to the successful candidate, Shri V. V. Giri.

The election was occasioned by the demise of the then President of India on the 3rd May, 1969. The Election Commission issued a notification under section 4 of the Presidential and Vice-Presidential Election Act No. XXXI of 1952 (hereinafter referred to as "the Act") appointing the 24th July, 1969, as the last date for filing nomination papers. The date for scrutiny of the nomination papers was 26th July, 1969, and the last date for with-

drawal of nomination was the 29th July 1969. The polling was fixed for the 16th August, 1969.

24 nomination papers were filed by the last date for filing nominations. The scrutiny took place on 26th July, 1969, in which the Returning Officer rejected 9 nomination papers, including the nomination papers of the petitioners in Election Petitions Nos. 1 and 3 of 1969. He accepted the nomination papers of 15 candidates. None of the 15 candidates withdrew his nomination by 29th July, 1969, the last date for withdrawal. At the poll on 16th August, 1969, consequently, there were these 15 candidates. Counting of votes took place up to the 20th August, 1969, when the result was declared and the respondent, who was one of the candidates whose nomination had been accepted by the Returning Officer, was declared elected. These election petitions have been filed by various persons, as enumerated above, challenging this election of the respondent. Various grounds have been taken in the pleadings in these election petitions for challenging the validity of the election of the respondent which, briefly described, are :-

(1) That the nomination papers of candidates Shri Shiv Kirpal Singh, Shri Charan Lal Sahu and Shri Yogi Raj were wrongly rejected by the Returning Officer;

(2) That the nomination papers of the respondent were wrongly accepted by the Returning Officer;

(3) That the nomination papers of Shri Rajbhoj Pandurang Nathuji, Shri Santosh Singh Kachhwaha, Shri Babu Lal Mag and Shri Ram Dulare Tripathi were wrongly accepted by the Returning Officer-, (4) That the offence of undue influence had been committed at the election by the respondent and his supporters with the connivance of the respondent;

(5) That the result of the election had been materially affected by the commission of offence of undue influence by persons other than the respondent without his connivance,;

(6) That the offence of, bribery at the election had been committed by the respondent and his supporters With his connivance; (7) That the result of the election had been materially affected by the commission of the offence of bribery by persons other than the respondent;

(8) That Part III and section 21 of the Act are ultra-vires the Constitution as well as Rules 4 and 6 (3) (e) of the Presidential and Vice-Presidential Elections Rules, 1952 (hereinafter referred to as "the Rules") promulgated under section 21 of the Act are

ultra vires the Constitution and the Act;

(9) That the elected Members of the Legislative Assemblies of the Union Territories were entitled to be included in the Electoral College for the election of the President and their wrongful non-inclusion had materially affected the result of the election, as well as it had violated Article 14 of the Constitution; and (10) That the petitioners were entitled to dispute the election even on grounds other than those mentioned in section 18 of the Act, viz., that the respondent or any person with his connivance had printed, published and distributed a pamphlet containing scurrilous attacks against the personal and moral character of one of the candidates, Shri N. Sanjiva Reddy, which were false.

The detailed facts relating to these grounds will be more conveniently mentioned when dealing with the various issues framed on the basis of these pleadings and, to avoid repetition, they are not being mentioned at this stage. On these pleadings, the following issues were framed in the various election petitions :-

Election Petition No. 1 of 1969.

1. Whether the nomination papers of the petitioner, Shri Charan Lal Sahu and Shri Yogi Raj were wrongly rejected as alleged in paragraphs 5(a) and

(b), 16 and 7 of the, petition ?

2. Whether the nomination papers of the respondent were wrongly accepted as alleged in paragraphs' 5 (c) and 8 of the petition ?

3. Whether the. nomination papers of Shri Rajbhoj Pandurang Nathuji and Pandit Babu Lal Mag were wrongly accepted as alleged in paras.

5 (d) and 9 of the petition?

4.(a) Whether the elected members of the Legislative Assemblies of the Union Territories were entitled to be included in the Electoral College for the election of the President ?

(b) Whether the non-inclusion of the members of the Legislative Assemblies of the Union Territories in the Electoral College amounts to noncompliance with the provisions of the Constitution ? If so, whether the result of the election has been materially affected by such non-compliance ?

(c) Whether the alleged non-compliance with the provisions of the Constitution has violated Article 14 of the Constitution ?

5. Whether section 21 of the Act is ultra vires the Constitution of India ?

6. Whether Rules 4 and 6 (3) (e) of the Rules are ultra vires the Constitution and the rule-making power of the Central Government ?

7. What reliefs, if any, is the petitioner entitled to ?

Election Petition No. 3 of 1969.

1. Whether the nomination paper of Shri Phul the Singh petitioner, was wrongly rejected ?

2. What relief, if any, is the petitioner entitled to ?

Election Petition No. 4 of 1969

1. Whether the nomination papers of Shri Shiv Kirpal Singh, Shri Charan Lal Sahu and Shri Yogi Raj were wrongly rejected, 'as alleged in paragraphs 8(a) and 9 (a). (b) and (c) of the petition ?

2. Whether the nomination papers of Shri Rajbhoj Pandurang Nathuji, Pandit Babu Lal Mag and Dr. Ram Dulare Tripathi were wrongly accepted as alleged in paragraphs 8 (b) and 10

(a), (b) and (c) of the petition ?

3. Whether the nomination papers of the respondent were wrongly accepted as alleged in paragraphs 8 (c) and 11 of the petition ?

4.(a) Whether all or any of the allegations made in paragraphs 8(e) and 13(a) to (m) of the petition constitute in law an offence of undue influence under section 18 (1) (a) of the Act ?

(b) Whether the said allegations made in paragraph 8(e) and 13 (a) to (m) are true and proved ?

(c) In the event of these allegations being proved and constituting undue influence-

(i) whether the returned candidate has committed the offence of undue influence ?

(ii) whether the offence of undue influence was committed by his workers, and if so, with his connivance ?

(iii) whether the offence of undue influence was committed by others without his connivance, and if so, whether that has materially affected the result of the election ?

5. Whether Part III and section 21 of the Act are ultra vires the Constitution of India ?

6. Whether Rules 4 and 6 (3) (e) of the Rules are ultra vires the Constitution and the rule-making power of the Central Government ?

7.(a) Whether the elected members of the Legislative Assemblies of the Union Territories were entitled to be included in the Electoral College for the election of the President ?

(b) If so, whether the non-inclusion of the members of the Legislative Assemblies of the Union Territories in the Electoral College amounts to noncompliance with the provisions of the Constitution ? If so, whether the result of the election has been materially affected by such non-compliance ?

(c) Whether the alleged non-compliance with the provisions of the Constitution has violated Article 14 of the Constitution ?

8.(a) Whether the petitioners are entitled to dispute the election of the respondent on grounds other than those mentioned in section 18 of the Act ?

(b) If issue No. 8 (a) is decided in favour of the petitioners-

(i) whether the respondent or any person with his connivance printed published and distributed the pamphlet at Annexure A-3 to the petition ?

(ii) whether the pamphlet at Annexure A-3 contained any false statement of facts relating to the personal character and conduct of Shri N. Sanjiva Reddy, a candidate at the election and other persons named in the pamphlet ?

(iii) whether the persons found responsible for publishing the pamphlet believed the statements made therein as true or had reason to believe them to be true ?

(iv) whether the pamphlet was published with the object of prejudicing the prospects of the election of Shri Sanjiva Reddy and furthering the prospects of the election of the respondent ?

(v) whether the election of the respondent is liable to be declared void on this ground ?

9. What reliefs, if any, are the petitioners entitled to ?

Election Petition No. 5 of 1969

1. Whether the nomination papers of Shri Shiv Kirpal Singh, Shri Charan Lal Sahu and Shri Yogi Raj were wrongly rejected as alleged in paragraphs 8(a) and 9 of the petition ?

2. Whether the nomination papers of the respondent were wrongly accepted as alleged in paragraphs 8 (b) and 10 of the petition ?

3. Whether the nomination papers of Shri Rajbhoj Pandurang Nathuji, Shri Santosh Singh Kachhwaha, Pandit Babu Lal Mag and Dr. Ram Dulare Tripathi were wrongly accepted as alleged in paragraphs 8(c) and 11 of the petition?

4, (a) Whether all or- any of the allegations made in paragraphs 8 (e) and 13 of the petition constitute in law an offence of undue influence under section 8(1)(a-) of the Act ?

(b)Whether the said allegations in paragraphs 8(e) and 13 are true and proved?

(c)In the event of these allegations being proved and constituting undue influence-

(i) whether the returned candidate has committed the offence of undue influence ?

(ii)whether the offence of undue influence was committed by his workers, and if so, with his connivance ?

(iii)whether the- offence of undue influence was committed by others without his connivance, and if so, whether that has materially affected the result of the election ?

5. Whether Part III and section 21 of the Act are ultra vires the Constitution of India ?

6. Whether Rules 4 and 6(3) (e) of the Rules are ultra vires the Constitution and the rule-making power of the Central Government ?

7.(a) Whether the elected members of the Legislative Assemblies of the Union Territories were entitled to be included in the Electoral College for the election of the President?

(b)If so, whether the non-inclusion of the members of the Legislative Assemblies of the Union Territories in the Electoral College amounts to non-compliance with the provisions of the Constitution ? If so, whether the result of the election has been materially affected by such non-compliance ?

(c)Whether the alleged non-compliance with the provisions of the Constitution has violated Article 14 of the Constitution ?

8.(a) Whether the petitioners are entitled to dispute the election of the respondent on grounds other than those mentioned in section 18 of the Act ?

(b)If issue No. 8 (a) is decided in favour of the petitioners-

(i) whether the respondent or any person with his connivance printed, published and distributed the pamphlet at Annexure A-38 to the petition ?

(ii) whether the pamphlet at Annexure A-38 contained any false statement of facts, relating to the personal character and conduct of Shri N. Sanjiva Reddy, a candidate at the election and other persons named in the pamphlet ?

(iii) whether the persons found responsible for publishing the pamphlet believed the statements made therein as true or had reason to believe them to be true ?

(iv) whether the pamphlet was published with the object of prejudicing the prospects of the election of Shri Sanjiva Reddy and furthering the prospects of the election of the respondent ?

(v) whether the election of the respondent is liable to be declared void on this ground ?

9. Whether the respondent or any other person with his connivance committed the offence of bribery as alleged in paragraph 15 of the petition ?

9A. Whether the allegations in para. 15 constitute bribery within the meaning of the Act ?

10. Whether the offence of bribery was committed at the election by any other person without the connivance of the respondent as alleged in paragraph 15 of the petition, and if so, whether it materially affected the result of the election ?

11. What reliefs, if any, are the petitioners entitled to ?

FINDINGS Issue No. 5 of Election Petitions Nos. 1, 4 and 5 of 1969. Under this issue in Election Petition No. 1 of 1969, the only point raised relates to the validity of section 21 of the Act, while, in the other two election petitions Nos. 4 and 5 of 1969 the validity of Part III of the Act as a whole is also challenged. It was contended that Part III of the Act is ultra vires Article 71 (1) of the Constitution on the ground that it purports to curtail the jurisdiction conferred on the Supreme Court to enquire into and decide all doubts and disputes arising out of or in connection with the election of a President or Vice-President by laying down certain limitations, such as the grounds on which only the election of a President or Vice-President can be challenged in an election petition. The question of validity of the Act was considered by this Court, in *BP. N. B. Khare v. Election Commission of India*(1), where the Court dealt with the contention that the Act and the Rules framed thereunder are void on the ground that they derogate from the jurisdiction of the Supreme Court to enquire into and decide all disputes and doubts arising out of or in connection with the election of the President or the Vice-President. This proposition was supported by the argument, that under section 18 of the Act, the election could be set aside only on certain grounds and that, further, under clause (b), it could be done only if the result of the election is shown to have been materially affected and that these are restrictions on the jurisdiction conferred by Article 71 and are ultra vires. The Court held:--

"Article 71 (1) merely prescribes the forum in which disputes in connection with the election of the President and Vice-President would be enquired into. It does not prescribe the conditions under which the petition for setting aside an election could be presented. Under Article 71(3), it is Parliament that is authorised to make law for regulating any matter relating to or connected with the election of the President or Vice-President, and the Act has been passed by Parliament in accordance with this provision. The right to stand for election and the right to move for setting aside an

election are not common law rights. They must be conferred by statute and can be enforced only in accordance with the conditions laid down therein. The contention that the Act and the Rules derogate from the jurisdiction of the Supreme Court under Article 71 (1) must accordingly be rejected."

The argument advanced was that the Court, in giving that decision, incorrectly proceeded on the basis that Art. 71 (1) merely prescribes the forum for the decision of doubts and disputes arising out of or in connection with the election of a President and Vice-President, and ignored the circumstance that Art. 71 (1) actually confers jurisdiction on the Supreme Court which jurisdiction cannot be curtailed by a parliamentary law passed under Art. 71(3) as the power of Parliament to pass the law is subject to the provisions of the Constitution, 'including the provision contained in Art. 71(1). The distinction sought to be drawn has no force at all. In that case, the Court specifically dealt with the argument that Art. 71 (1) confers jurisdiction on the Supreme Court and gave its decision after considering this aspect. In any case even if the argument advanced is accepted that Art. 71 (1) defines the jurisdiction of the Supreme Court, the manner in which, that jurisdiction is to be exercised can only be (1)[1958] S.C.R. 648 regulated by an Act of Parliament passed in exercise of its power under Art. 71(3) In exercise of that power to regulate all matters relating to or connected with the election of a President or Vice-President, Parliament clearly had power of laying down On grounds on which the election can be challenged and set aside, in addition to other matters relating to the election.

In this connection, learned counsel also wanted to draw an inference from the provision in Art. 329 (b) of the Constitution ,which lays down that 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 or under any law made by the appropriate Legislature. The argument was that, in this Article, there was specific mention of a law made for calling in question an election by an election petition, whereas there is no such corresponding provision in Art. 71 of the Constitution. The argument advanced is clearly misconceived. In the case of elections to either House of Parliament or to the House or either House of the Legislature of a State, Parliament exercises powers to make law with respect to all matters relating to or in connection with the election under Art. 327 and not under Art. 329(b). Article 329(b) is a provision which lays down a limitation on the manner in which an election can be. called in question, while the procedure for calling in question the election. as well as the grounds on which the election can be called in question, can only be laid down by Parliament by a law passed under Art. 327. In the case of Art. 71. it appears that no need was felt of making a provision similar to Art. 329(b) when Art. 71 (1) it-self laid down the limitation that all doubts and disputes arising out of or in connection with the election of a President or Vice- President are to be enquired into and decided by the Supreme Court whose decision shall be final. This limitation does not affect or limit the power of Parliament to regulate matters relating to filing of election petitions in the Supreme Court and of the grounds on which the elections can be challenged when the Supreme Court exercises its jurisdiction under Art. 71(1). In these circumstances, the argument that Part III of the Act is ultra vires Art. 71(1) of the Constitution must be rejected So far as the validity of section 21 of the Act is concerned, it was challenged on the ground that the power of making rules suffers from the vice of excessive delegation of legislative powers inasmuch as even essential matters of policy. are left to

be prescribed by rules by fix Government and there are no building principles to that the power can be exercised arbitrarily. It was further stressed that, in the Act, no provision similar to section 169(3) of the Representation of the People Act, 1951 or section 28 (3) of the Representation of the People Act, 1950, was included by Parliament so as to require that the Rules framed under section 21 of the Act should be laid before each House of Parliament and. that the Rules should be ` subject to modifications or annulment by Parliament. It is not possible to hold that section 21 suffers from any such defects. Parliament laid down the essential matters of policy relating to elections, including election petitions, in the Act itself and, thereafter, in section 21 delegated the-power of making rules to the Central Government, subject to two principles of guidance. One is that the Rules are to be made after consulting the Election Commission, and the second is that the Rules must be such as are needed for carrying out the purposes of the Act. This second limitation clearly requires that the Government, in making Rules, has to ensure that the Rules are all required for carrying out the purposes of the Act; and that itself is a sufficient limitation on the exercise of that power arbi- trarily by the Government. In Part II of the Act, the Legislature has laid down the essential regulations for holding the elections, and in Part III, similarly, the essential matters relating to filing of election petitions and their decision, including the grounds on which the elections can be challenged, have been prescribed by Parliament itself. It is in order to give effect to these principles laid down by Parliament itself in the Act that the Government is to exercise its power of making rules. Such power being already limited by the purposes of the Act cannot be held to be unguided or even arbitrary, even though Parliament did not choose to lay down the requirement that the Rules framed must be laid on the table of the two Houses of Parliament and should be subject to modification or annulment within a specified period. In fact. Parliament all the time has the power of altering the Rules by amending the Act itself in case it disapproves of any of the Rules made by the Government, while any Rule, which is shown to have been made in contravention of the provisions of the Act, or for any reason other than to give effect to the purposes of the Act, would be declared void by the Court not on the ground that there was excessive delegation of legislative power, but that it goes beyond the scope of the power conferred on the Government under section 21 of the Act. Section 21 of the Act itself cannot. therefore, be held to be void on any ground Issue No. 6 of Election Petitions Nos. 1, 4 and 5 of 1969 Under this issue, the petitioners challenged the validity of Rule 4 (1) of the Rules to the extent that it requires that a certified copy of the entry relating to the candidate in the electoral roil for the Parliamentary constituency in which he is registered must accompany the nomination paper, and the validity of the consequential provision in Rule 4(2) which lays down that a nomina-

tion paper, to which the certified copy referred to in sub- rule 11 of this Rule is not attached, shall be rejected. This part of Rule 4(1) is challenged on two grounds. One is that such a requirement is beyond the rule-making power of the Government under section 21 of the Act, and the second is that the Rule is arbitrary and unreasonable inasmuch as it lays down only one single manner of showing that a candidate is an elector for a Parliamentary constituency by filing a certified copy of the entry, ruling out all other methods, such as filing of the published electoral roll itself, On the face of it, the first ground raised has no force. Clause (d) of sub-s. (2) of section 21 lays down that the Rules made under that section may, in particular, and without prejudice to the generality of the power granted under sub-s. (1), provide for the form and manner in which nominations may be made and the procedure to be followed in respect of the presentation of nomination papers; and. the requirement

and that a certified copy of the entry, showing that the candidate being nominated is an elector for a Parliamentary constituency which alone makes him eligible to stand as a candidate for the office of President or Vice-President, must accompany the nomination paper falls squarely within this clause. The requirement relates to the manner of proving that the candidate is an elector in a Parliamentary constituency. In any case, this provision in Rule 4(1) would be fully covered by section 21 (1) of the Act inasmuch as the requirement is for no other purpose except of ensuring a smooth and proper election to the office of the President or Vice-President which object can be achieved by enabling the Returning Officer to ensure that candidates, whose nominations are accepted by him, are eligible for election. In this connection, reference was made to the decision of this Court in *Ranjit Singh v. Pritam Singh and Others*(1), where the Court had to deal with section 33(5) of the Representation of the People Act, 1951, and the Court held :-

"The object of this provision obviously is to enable the returning officer to check whether the person standing for election is qualified for the purpose. The electoral roll of the constituency for which the returning Officer is making scrutiny would be with him, and it is not necessary for a candidate to produce the copy of the roll of that constituency.. But where the candidate belongs to 'another constituency, the returning officer would not have the roll of that other constituency with him and therefore the provision contained in s. 33(5) has been made by the legislature to enable the returning officer to check that the candidate is qualified for standing for election. For that purpose the candidate is (1)(1966) 3 S.C.R. 543.

given the choice either to produce a copy of the electoral roll of that other constituency, or of the relevant part thereof or of a certified copy of the relevant entry in such roll before the returning officer at the time of the scrutiny, if he has not already filed such copy with the nomination paper.

This decision clearly supports the view that the requirement in Rule 4(1), that a certified copy of the entry showing that the candidate is an elector in a Parliamentary constituency is necessary in order to enable the Returning Officer to check whether the candidate is eligible for nomination and election. The manner in which the Returning Officer should, be given the necessary information is a matter of detail relating to nomination and, consequently, this Rule is within the scope of the power conferred on the Central Government to make Rules for giving effect to the purposes of the Act.

Based on this very decision cited above, learned counsel for the petitioners urged that, in section 33 (5) of the Representation of the People Act, 1951, the requirement is the production of either a copy of the electoral roll, or of the relevant part thereof, or a certified copy of the relevant entry in such roll, while, in Rule 4(1) of the Rules, the only manner of satisfying the Returning Officer about eligibility permitted is the filing of a certified copy of the entry and, consequently, the requirement in Rule 4(1) is arbitrary and unreasonable. It has to be kept in view that the election for the office of the President or Vice-President does not stand on the same footing as the election for membership of a House of Parliament or a House of the State Legislature. In the latter case, the Returning Officer usually has the electoral roll of the constituency, from which election is to be held, with him and, by and large, the candidates standing from a constituency are enrolled as electors in the same constituency. Provision had to be made in section 33 (5) of the Representation of the People Act,

1951, for those limited cases where the candidate stood for election from a constituency different from the one in which he is enrolled as an elector. In the case of election for the office of President or Vice- President, any elector enrolled in the electoral roll of any Parliamentary constituency in India is entitled to stand as a candidate, and it is clear that the electoral rolls of those constituencies will not be with the Returning Officer. In every case, therefore, it would be necessary that some evidence should be available with the Returning Officer so as to enable him to ensure that the candidate is eligible for election. In order to make certain that the election proceeds smoothly and to minimise the chances of disputes or doubts arising, the requirement laid down in Rule 4 (1) is that a certified copy of the entry alone should be accepted as the proper proof for showing eligibility of the candidate. Electoral rolls are subject to revision from time to time. At the general elections, they are fully revised and, then, subsequent alterations are made in them as occasions arise. The election to, the office of a President or Vice-President may not coincide with or be very close to the time when there is general revision of the electoral rolls, so that the electoral rolls printed and published nearabout the time of general elections may be out of date by the time the election for the office of a President or Vice-President is held. The published electoral roll may, therefore, be misleading if it is allowed to be filed before the Returning Officer to show eligibility in the case of a Presidential or Vice- Presidential election. That seems to be the reason why Rule 4(1) lays down that a certified copy of the entry alone will be the proper manner of satisfying the Returning Officer of the eligibility of the candidate. The original electoral roll, of course, cannot be produced as there is only one original which is retained either by the Electoral Registration Officer or in the office where the Chief Electoral Registration Officer directs it to be preserved in accordance with the Rules framed under the Representation of the People Act, 1950. In such circumstances, if the rule- making authority did not consider it safe to rely on printed copies of the electoral rolls issued generally at the time of general elections to Parliamentary constituency, it cannot be said that the authority acted arbitrarily or unreasonably. The smoothness of the elections could only be ensured by requiring the filing of a certified copy of the entry which would be immune from any doubt or challenge. The mere fact that the requirement of Rule 4(1) of the Rules differs from the requirement of section 33(5) of the Representation of the People Act, 1951, cannot be a ground for holding that Rule 4(1) lays down an unreasonable restriction, so that this Rule must be held to be valid. Rule 4(2), which prescribes the consequence for non- compliance with the requirement of Rule 4(1), must also be held to be valid as it is intended merely to make the valid Rule 4(1) effective.

The next challenge is to the validity of Rule 4(3) and the consequential Rule 6(3) (e) of the Rules. Rule 4(3) lays down that no elector shall subscribe, whether as proposer or as seconder-, more than one nomination paper at any election, and Rule 6(3)(e) is the consequential provision laying down that the Returning Officer shall reject a nomination paper on the ground that the proposer or seconder has subscribed, whether as proposer or seconder, another nomination paper received earlier by the Returning Officer at the same election. The validity of Rule 4(3) has been impugned on the ground that it is in derogation of the rights conferred on a candidate or on electors by section 5(2) of the Act. Section 5 reads as follows:-

.lm15 "5. Nomination of candidates.-(1) Any person, may be nominated as a candidate for election to the office of President or Vice-President if he is qualified to be elected to that office under the Constitution.

(2)Each candidate shall be nominated by a nomination paper completed in the prescribed form and subscribed by the candidate himself as assenting to the nomination and by two electors as proposer and seconder."

The argument is that every candidate, under section 5 (2), has a right to be nominated by any two electors as proposer and seconder without any limitation as to who those two electors are and irrespective of those electors having done any act, such as having proposed or seconded another candidate. It is also urged that this provision confers a right on every elector to subscribe a nomination paper as proposer or seconder without any limitation as to the number of nomination papers which can be so subscribed by him. The submission that section 5 (2) should be read as conferring any right either on the candidate or on the electors in respect of signing of nomination papers cannot be accepted. On the face of it, the provision made in section 5 relates to procedural matters leading up to the exercise of electoral rights of a candidate or an elector. The filing of nomination paper only regulates the manner in which a candidate is to signify the fact that he desires to be elected, and the provision for the nomination paper being signed by two electors as proposer and seconder is meant only to indicate to the electors in general that the candidate is being put forward for election by at least two electors. The nomination paper also serves the purpose of informing the Returning Officer who are the candidates, so that appropriate steps can be taken for holding the poll by having ballot papers printed and appropriate number of ballot boxes provided. The language of section 5 (2) itself shows that it was while prescribing the manner of subscribing a nomination paper that Parliament laid down that it should be subscribed by the candidate himself as assenting to the nomination and by two electors as proposer and seconder. Had there been an intention to confer a right on any, of them' the language would have been different giving such indication by laying down what the candidate and the electors are entitled to do in respect of a nomination paper.' Obviously, section 5 only lays down the essential ingredients of the process of nomination, leaving the details of the manner of nomination to be filled up by Rules made by the Government under section 21 of the Act. Rule 4(3), which requires that no elector shall subscribe, whether as proposer or seconder, more than one nomination paper at any election, is, thus, supplementary to section 5 (2) as containing a more detailed direction in respect of filing of nomination papers.

In this connection, learned counsel for the petitioners referred to the decision of this Court in *Amolak Chand v. Raghuveer Singh*(1), in which a similar provision contained in section 33 of the Representation of the People Act, 1951, as amended by the Amending Act 27 of 1956, came up for consideration. Prior to the Amending Act 27 of 1956, section 33, dealing with this subject, specifically laid down that any person, whose name is registered in the electoral, roll of the constituency and who is not subject to any disqualification mentioned in section 16 of the Representation of the, People Act, 1950, may subscribe as proposer or seconder as many nomination papers as there are vacancies to be filled, but no more; and there was also a consequential provision in section 36 (7) (b) which laid down that, where a person has subscribed, whether as proposer or seconder, a larger number of nomination papers than there are vacancies to be filled, those of the papers so subscribed which have been first received, up to, the number of vacancies to be filled, shall be deemed to be valid. These provisions were omitted by the Amending Act 27 of 1956, and thereafter, the language of section 33 became similar to that of section 5 (2) of the Act inasmuch as

it required the candidate to deliver to the Returning, Officer a nomination paper completed in the prescribed form and signed by the candidate and by an elector of the constituency as proposer. The question arose, whether, if a single elector signed more than one nomination paper as a proposer, any of the nomination papers could be held to be invalid. The Court held that, After the enactment of the Amending Act 27 of 1956, there was no ban in section 33 of an elector signing more than one nomination paper and, consequently, if an elector signed more than one nomination paper, all the nomination papers would be valid. That case is, thus, limited to the question whether there is or is no ban on an elector signing more, than one nomination paper as a proposer. It did not lay down that every elector had been conferred a right to sign the nomination paper of more than one candidate as a proposer. While no. right can be read as having been conferred by such a provision, there will be no bar to a rule being made by the rule-making authority limiting the number of nomination papers to be signed by each elector as a proposer or a seconder. In fact, Rules are always meant to fill in details of procedure in respect of which the Act does not contain specific provisions. The Rules are meant to supplement the provisions of the Act and to deal with matters incidental, in respect of which there is no definite provision made in the Act itself. The fact that there is no ban in section 5 (2) of the Act on an elector signing more than one nomination paper (1)[1968] 3 S.C.R. 246.

8--L303 Sup CI/71 as a proposer or a seconder does not, therefore, mean that Rule 4(3) of the Rules could not have been competently made by the Government. Rule 4(3), on the face of it, contains a very reasonable direction. If there is only one vacancy for which election is to be held, an elector can reasonably be expected to nominate only one candidate as proposer and put him forward before the other electors as a suitable person to be chosen. Similarly, when seconding a nomination paper, an elector indicates his preference for that candidate to the general electorate which is to cast votes at the election. If the indication of such choice is restricted to as many candidates as there are vacancies, the provision, is, on the face of it, salutary and conducive to proper election.

The historical background of the Rules relating to elections in India also bears out that such a provision has always been considered desirable. The earliest Rules that have been brought to our notice are the Electoral Rules and Regulations made for elections to the Legislative Assembly at the Centre and to the Legislative Councils of Provinces under the Government of India Act. The Rules, as revised up to 25th August, 1934, made by the Central Government, contain a provision in Rule 11 (3) of Part IV, similar to that of section 5 of the Act, by laying down that the nomination paper shall be subscribed by the candidate himself as assenting to the nomination and by two persons as proposer and seconder whose names are registered on the electoral roll of the constituency. This is followed by sub-rule (4) which limits the number of nomination papers to be subscribed as proposer or seconder by an elector to the number of vacancies to be filled but no more. These two requirements having been laid down by the Rules, the further procedure was governed by the Regulations made for each Province for conducting the elections in that Province even in respect of the Central Legislative Assembly. In the Presidency of Madras, Regulation 7 (1) (iii) empowered the Returning Officer to refuse any nomination on the ground that there has been a failure on the part of the candidate or his proposer or seconder to comply with any of the provisions of Rule 11; and it was in exercise of this power that the Returning Officer could reject the nomination paper signed by an elector or proposer in excess of the number of vacancies. For the Presidency of Bombay, a similar

provision was made in Regulation 3 of the Legislative Assembly (Bombay) Electoral Regulations dated 13th September, 1923, for rejection of the nomination paper by the Returning Officer. The corresponding provision for the Province of Bengal was contained in Regulation 20; for United Provinces in Regulation 9; for Punjab in Regulation 4; for Burma in Regulation V; for Bihar and Orissa in Regulation 24; for the Central Provinces in Regulation 4; and for Delhi in Regulation 5. All these Regulations were made under Rule 15 of the Legislative Assembly Electoral Rules. Thus, the principle that an elector should not sign nomination papers as proposer or seconder in excess of the number of vacancies was observed throughout India. Similar provisions existed in the various Provinces in respect of elections to be held to the Legislative Councils of the Provinces. Later, when the Council of State came into existence after the Government of India Act, 1935, provision was made in Rule 11 (4) limiting the number of nomination papers, which could be subscribed by an elector as proposer or seconder, to the number of vacancies to be filled and no more. Even in the Representation of the People Act, 1951, when first enacted, there was a similar provision. The Act, with which we are concerned, was passed in 1952 in this stage of legislation and it is obvious that Parliament, when enacting section 5, left it to the rule-making authority to make detailed provisions of this nature.

It may also be mentioned that a similar provision exists in the Rules governing elections in England. The Act in question is the Representation of the People Act, 1949, and the Rules for Conduct of Elections were contained in the Second Schedule to that Act. Rule 8 (1) of the Second Schedule was similar to section 5 (2) of the Act laying down that the nomination paper shall be subscribed by two electors as proposer and seconder, and by eight other electors as assenting to the nomination. Rule 8 (5) laid down the limitation that no person shall subscribe more than one nomination paper at the same election and, if he does, his signature shall be inoperative on any paper other than the one first delivered. The provision is not only similar, but it is significant that, when laying down the limitation in Rule 8 (5), the language used indicates that no right on an elector to subscribe as proposer and seconder any number of nominations was envisaged as having been conferred by Rule 8 (1). If we were to hold that Rule 8 (1), which is similar to section 5 (2) of the Act, conferred a right on an elector to subscribe any number of nomination papers as proposer and seconder, Rule 8 (5) would have contained words indicating that it will over-ride the provisions of Rule 8(1). This could have been done either by making Rule 8(1) subject to Rule 8 (5), or by stating in Rule, 8 (5) that it shall prevail notwithstanding anything contained in Rule 8(1). There was, in fact, no need to use such qualifying words, because Rule 8 (1) could not be interpreted as conferring a right on an elector to subscribe more than one nomination paper as proposer or seconder, so that Rule 8 (5) was not a limitation on any right conferred by the earlier sub-rule. In these circumstances, it must be held that Rule 4 (3) of the Rules was validly made by the Government in exercise of its rule-making power under section 21 of the Act. That Rule being valid, Rule 6 (3) (e) of the Rules, which is consequential, must also be held to be valid.

Issue No. 1 in Election Petitions Nos. 1, 4 and 5 of 1969. These issues between them raise the question of the validity of the rejection of the nomination papers of three persons, Shri Shiv Kirpal Singh, Shri Charan Lal Sahu and Shri Yogi Raj. The nomination paper of Shri Shiv Kirpal Singh was rejected on the ground that it was not accompanied by a certified copy of the entry relating to him in the electoral roll for the Parliamentary constituency in which he was registered. Instead, his

nomination paper was accompanied by a few printed sheets purporting to be part of the electoral roll of that constituency containing his name as an elector. It has already been held above, when dealing with Issue No. 6, that Rule 4(1), requiring that the nomination paper must be accompanied by a certified copy of the electoral roll containing the entry relating to the candidate, is valid and mandatory. Since there was clear non-compliance with that Rule, the rejection of the nomination paper of Shri Shiv Kirpal Singh was 'correct and justified.

The nomination paper of Shri Charan Lal Sahu was rejected on the ground that he was less than 35 years of age on the date of nomination. The nomination paper was, no doubt, accompanied by a certified copy of the, entry in the electoral roll in which his age was shown as 32 years on 1-1-1966. The Returning Officer had some doubt whether Shri Charan Lal Sahu had completed the age of 35 years and, consequently, he asked Shri Charan Lal Sahu, who was present at the time of scrutiny, to state his date of birth. He gave in writing that his date of birth was 15-3-1935. According to this date of birth given by Shri Charan Lal Sahu himself in his own handwriting to the Returning Officer, he was clearly below 35 years of age on the date of nomination. The nomination paper was rejected on this ground. The rejection is based on Shri Charan Lal Sahu's own statement given before the Returning Officer; and it is significant that in none of these election petitions has any assertion been made that, in fact, the age of Shri Charan Lal Sahu was more than 35 years on the date of nomination. The only attempt made is to challenge the order of the Returning Officer on the ground that the entry in the electoral roll showed that he was qualified as a candidate, having attained the age of 35 years. That entry is of little value after Shri Charan Lal Sahu's own statement in writing indicating that he was less' than 35 years of age. While no election petitioner is prepared to assert and prove that Shri Charan Lal Sahu had in fact completed 35 years on the date of nomination, it has to be held that the rejection of his nomination paper was fully justified and correct. So far as the rejection of the nomination Paper of Shri Yogi Raj is concerned, his nomination paper was rejected on the ground that he had been proposed and seconded by the same electors who had proposed and seconded another candidate, Shri Rajbhoj' Pandurang Nathuji, and the nomination of the later was received earlier by the Returning Officer. The Returning Officer rejected the nomination paper by an order made in accordance with Rule 6(3) (e) read with Rule 4(3) of the Rules. The correctness of this order was challenged on the ground that these Rules are ultra vires the Act. In dealing with issue No. 6, it has already been held that these Rules are valid and are not in contravention of section 5 (2) of the Act. The rejection of his nomination paper, based on these valid Rules, was justified and, consequently, it can- not be held that his nomination paper was wrongly rejected. Issue No. 2 in Election Petitions Nos. 1 & 5 and Issue No. 3 in Election Petition No. 4 of 1969.

The acceptance of the nomination paper of the respondent has been challenged on the ground that his nomination paper was not accompanied by a certified copy of the entry relating to him in the Parliamentary constituency in which he was registered. After examining the certified copy filed, it is not possible to accept the submission, because, on the face of it, it is a certified copy of the electoral roll issued by the appropriate authority. These issues are, therefore, decided against the election petitioners. Issue No. 3 in Election Petitions Nos. 1 & 5 and Issue No. 2 in Election Petition No., 4 of 1969 Under these issues, the validity of the acceptance of the nomination papers of four candidates, Shri Rajbhoj Pandurang Nathuji, Shri Santosh Singh Kachhwaha, Pandit Babu Lal Mag and Dr. Ram Dulare Tripathi, was challenged. In Election Petition No. 5 of 1969, the nomination paper of Shri

Rajbhoj Pandurang Nathuji was challenged on two grounds, but one of the grounds was given up, and the only ground, which was pressed and which was also common to other election petitions, was that the copy of the electoral roll, which accompanied his nomination paper, was not certified by the appropriate officer. This submission was made on the wrong basis that the Rules required that the certified copy must be issued either by the Electoral Registration Officer or the Assistant Electoral Registration Officer. The copy was, in fact, issued by one Shri M.V. Madhke with a rubber seal under it showing that he was functioning as Tehsildar, Poona City. It appears that the permanent Tehsildar of Poona City was the Assistant Electoral Registration Officer, but, at the time of the issue of the copy, he happened to be absent and Shri M. V. Madke, who was Aval Karkun, was acting in his place. Since Shri M. V. Madke was acting in place of the Tehsildar, he was also in charge of the electoral rolls which were in his custody. He was further empowered to exercise all the powers given to the Tehsildar. He, therefore, was competent to issue the certified copy in two capacities, viz., (1) as exercising powers of the Tehsildar conferred on him while he was acting in place of the permanent Tehsildar and (2) in the capacity of custodian of the document of which the copy was required. There is nothing in the Rules framed under the Act, or under the Representation of the People Act, 1950 and Rules framed thereunder, requiring that a certified copy of the electoral roll must necessarily be issued by either an Electoral Registration Officer or an Assistant Electoral Registration Officer. Every government servant, who has custody of a document, is competent to issue certified copies of that document, so that the certified copy issued by Shri M. V. Madke was a valid and good copy and there was no reason for rejection of his nomination paper. It was rightly accepted. In the case of Shri Santosh Singh Kachhwaha, the only ground pressed was that his nomination paper was signed by the proposer and the candidate on 16th July, 1969, while the seconder signed it on 21st July, 1969. Thereafter, the candidate himself presented this nomination paper to the Returning Officer on 23rd July, 1969. His case may be considered with that of Pandit Babu Lal Mag in which also the ground for challenging the validity of the nomination paper is similar. His nomination paper was signed by him on 18th July, 1969, while both the proposer and the seconder signed it on 21st July, 1969. Thereafter, Pandit Babu Lal Mag himself presented the nomination paper to the Returning Officer. The point raised was that, in one case, the seconder signed the nomination paper after the candidate, while, in the other case, both the proposer and the seconder signed after the candidate had done so. The nomination paper shows that the candidate, when signing, purports to "assent to this nomination". It was urged that a signature in token of such assent to that particular nomination must be made by a candidate after both the proposer and the seconder have signed. Reliance was placed in this connection on the decision in *Harmon v. Park*(1). In that case, the question arose about the validity of a nomination paper of a candidate Mark Harmon which, when initially presented, had the name of William Ball as proposer, together with signatures of the seconder and eight burgesses as assenting parties to that nomination. The clerk, on looking at the burgess roll, found that the name of William Ball was on the list of electors, but it was noted in the margin "not entitled to vote here". At the time of presentation, one John Green, a duly enrolled burgess, happened to come into the office and, seeing the nomination paper signed by Ball, and knowing that the name of William Ball was not on the burgess roll as a person entitled to vote, struck out Ball's signature (1) [1881] 7 Q.B.D. 369.

and inserted his own name in lieu thereof. At that time, Ball, the original proposer, the seconder and the assenting burgesses were not present. Green handed in this nomination paper to the town clerk.

It was in these circumstances that the nomination paper was held to be invalid. Grove, J., held.:-

"The argument for the appellant was that these eight persons assent to the nomination of the candidate as a proper person to be nominated; an argument which if carried to its full extent Must involve the proposition that the assenting burgesses may subscribe a nomination paper with the names of proposer and seconder in blank. But the assents required by the Act, are to the nomination in the form in which it is written, so that any person assenting may first see who is proposer and seconder. It may well induce them to give their assent if they find that the proposer and seconder are good and responsible persons in whom they may trust. I think, therefore, that the nomination was bad, and the name of the appellant properly rejected as a candidate."

Lindley, J., agreeing with him said "The Act of Parliament requires that the eight burgesses shall assent to the nomination. What then is the nomination in writing to which they assent ? The nomination consists in filling up the name of the candidate on the nomination form, with the signatures of the proposer and seconder. The argument for the petitioner comes to this, that the eight persons might sign even before the name of the candidate was on the nomination paper. This is not the kind of assent required by the statute. The nomination must precede the assent, the assent must not precede the nomination."

Thus, in that case the nomination paper was held to be invalid, because the signature of John Green, who was ultimately the proposer, was put on the nomination paper after the seconder, the candidate and the eight assenting burgesses had all signed it. However, the point to be noticed is that, in that case, the invalidity was found because the circumstances in which John Green substituted his name as the proposer showed that the assenting eight burgesses had no knowledge at all that he had become the proposer, as they had only assented to the nomination signed by William Ball. John Green substituted his name for that of William Ball in the absence of the burgesses. On this ground, it was held that the nomination paper could not be held to contain in it the assent of the eight burgesses. That case is distinguishable from the)resent case. In the present case, when the candidates concerned signed in token of their assent before the proposers or the seconders had signed their nomination papers, the candidates knew that they were assenting to be put forward as candidates at the election and, subsequently, after the proposers and seconders had signed their nomination papers, they themselves took those nomination papers and presented them before the Returning Officer. Clearly, therefore, they indicated their assent to being nominated by the particular proposers and seconders, who signed their nomination papers, by taking the step, after their signatures, of carrying the nomination papers to the Returning Officer and presenting them as valid nominations.

There is further the circumstance that, though, in England, in the particular circumstances of the case in *Harmon v. Park*(1) it was held that a nomination paper was invalid if signed by the proposer after it had been signed by eight burgesses in token of their assent, the law as to nominations in India has throughout been interpreted different. As early as the year 1922, when also the provision in respect of signing of nomination papers was similar, it was held by the Election Tribunal in

Jamna Prasad v. Sri Krishna Prasad (2) that :

"there is no rule as to, the order in which names should be signed. On the other hand, the subscription by the candidate is mentioned in the rule before that by the proposer and seconder. We should not read' into the words of the rule any words which do not exist and say that the proposer and the seconder must sign their names before the subscription by the candidate himself; when the requirement is merely that the candidate must also subscribe to the paper as assenting to the nomination, that is to say, the naming of himself as a candidate for the-constituency. What has been done by the petitioner does not offend the words or the spirit of the rule."

The Election Tribunal also took notice of the decision in *Harmon v. Park* (1) and distinguished it on the ground that that case could not apply where the subscription by the candidate himself and the making of signatures by the proposer and the seconder had only to be considered, while there was no question of assent of other persons like eight burgesses.

The same view was taken in the year 1924 by the Election Tribunal in the case of *Rai Bahadur Prosanna Kumar Das Gupta v. Mr. Chittaranjan Das*(3). In that case also, the Tribunal distinguished the decision in *Harmon v. Park*(1) and, in addi-

(1) [1881] 7 Q.B.D. 369.

(2) Case No. 121 reported at p. 79 of *Doabia's Election Cases 1864-1935 Vol. II, 1955 Edn.*

(3) Case No. 120 reported at p. 73 of *Doabia's Election Cases 1864-1935 Vol II, 1955 Edn.*

tion, referred to the decision in *Cox & others v. Davies*(1). In the latter case, Grantham, J., had occasion to deal with a situation very similar to the one in the present case. He held :-

"The language of the present rule, is not the same as that of the section upon which those cases were decided. It would require a good deal to convince me that there is anything wrong in a candidate filling his own name in after those of his proposer and seconder. In my own practical experience of elections it is a thing which is constantly done. If the signatures of the proposer and seconder were used for the purpose of filling in the name of a candidate that they did not intend, that would be another matter. *Harmon v., Park* was a very different case from this".

In this case the validity of the nomination paper was being challenged on the ground that the candidate had filled in his own name after the proposer and seconder had already signed it and, yet, it was held that the nomination paper was valid on the ground that there was nothing to show that the proposer and seconder did not intend to nominate that particular candidate. In the present case, there is nothing to show that the candidates did not intend to be nominated by the proposers and seconders who had signed their nomination papers after they had signed them in token of their assent. On the other hand, as indicated above, it must be held that the candidates actually signified

their assent to being nominated by the proposers and, seconders, who had signed earlier, by presenting the nomination papers themselves to the Returning Officer.

Another Election Tribunal, in the year 1946, arrived at the same decision in the case of Mahant Digvijai Nath v. Sri Prakash(2). In that case also, the candidate had signed the nomination paper before it was signed by the proposer and seconder. The Tribunal placed reliance on the decision in Jammna Prasad v. Sri Krishna Prasad (supra) and held -

"Even if it is assumed that strictly speaking the candidate must sign his name after the proposer and seconder have signed it, there is no direction in the rules that it should be so and that there is no "in validating consequence" provided for in the rules in case this has not been done."

(1) [1898] 2 Q.B.D. 202 (2) Case No. XXIV reported at p. 147 of Indian Election Cases 1935-51 by Sen & Poddar.

In fact, the Tribunal went to the extent of holding that :-

"It is not open to the returning officer to enquire in what order the signatures had been made so long as the signatures are not found to be not genuine or obtained by fraud."

In that case also, the Tribunal took notice of the two English decisions in Harmon v. Park(1) and Cox & Others v. Davies(2) and inferred that it cannot be held that there is any natural order in which nomination paper should be filled up and signed and, unless there is something specific in the Rules, the fact that, a candidate gives his assent on the nomination paper before the proposer and seconder had signed it or before the other entries had been completed is of no consequence. Thus, when the Act was enacted in 1952, the law in India, as administered by various Election Tribunals, was clear that the order, in which signatures are made on a nomination paper by the candidate, the proposer and the seconder, is immaterial and no nomination paper would be invalid if the signatures are made by the candidate before the proposer and the seconder signed it. The Legislature, when enacting the Act, must be presumed to know that this was the law as interpreted in India and, consequently, when the language incorporated in section 5 (2) of the Act was used, it must have been intended that nomination papers would not be invalid by reason of the candidate making his signature before the proposer and the seconder. Even subsequently, a similar provision in the Representation of the People Act, 1951, and the Rules framed thereunder for conduct of elections and election petitions, was interpreted in the same manner by the Election Tribunal in the case of Yamuna Prasad V. Jagdish Prasad Khare & Others(3). Consequently, it cannot be held that, in the present case, the nomination paper of Shri Babu Lal Mag was invalid because he signed his nomination paper before it was signed by the proposer and seconder, or that the nomination paper of Shri Santosh Singh Kachhwalia was invalid because he signed his nomination paper before his seconder had signed it. The nomination papers of both these candidates were, therefore, rightly accepted.

So far as the nomination paper of Dr. Ram Dulare Tripathi is concerned, the allegation was that it did not appear to bear the signatures of the proposer and the seconder, because a mere look will make it clear *ex facie* that the whole of the nomination paper, including the signatures of the proposer, the seconder, and the candidate are in the handwriting of one person. This allegation was controverted by the Returning Officer in his counter-affidavit who has sworn that it did not appear to him that all the signatures (1) [1881] 7 Q.B.D.369. (2) [1881] 2 Q.B.D. 202. (3) (1957-58) 13 E.L.R. 1 were in one handwriting and that he was satisfied that the nomination paper had been properly proposed, seconded and signed. After this counter-affidavit, when the petition was argued, learned counsel for the petitioner did not press this issue and did not try to produce any evidence to show that the signatures of the proposer, the seconder, and the candidate were not genuine. Consequently, the acceptance of the nomination paper of Dr. Ram Dulare Tripathi was not invalid.

Issue No. 4 in Election Petition No. 1 of 1969 and Issue No. 7 in Election Petitions Nos. 4 and 5 of 1969. The ground covered by these issues is sought to be raised on the basis of the provisions contained in Art. 54 of the Constitution read with the definition of "State" contained in clause (58) of section 3 of the General Clauses Act, 1897. It was urged that, under Art. 54, the Electoral College consists of the elected members of both Houses of Parliament, and the elected members of the Legislative Assemblies of the States. Relying on the definition of "State" in section 3 (5 8) of the General Clauses Act, it is argued that Union Territories are also States and, consequently, the elected members of the Legislative Assemblies of the Union Territories must also be included in the Electoral College. Their omission is a material irregularity which vitiates this election. There are two reasons why, on the face of it, this submission has to be rejected as untenable. Article 54, no doubt, lays down that all elected members of the Legislative Assemblies of the States are to be included in the electoral college; but the word "States" used in this Article cannot include Union Territories. It is true that, under Art. 367, the General Clauses Act applies for interpretation of the Constitution as it applies for the interpretation of an Act of the Legislature of the, Dominion of India; but that Act has been applied as it stood on 26th January, 1950, when the Constitution came into force, subject only to any adaptations and modifications that may be made therein under Art. 372. The General Clauses Act, as it was in 1950 and as adapted or modified under Art. 372, did not define "State" so as to include a Union Territory. The Constitution was amended by the Constitution (Seventh Amendment) Act, 1956, which introduced Art. 372A in the Constitution permitting adaptations and modifications of all laws which may be necessary or expedient for the purpose of bringing the provisions of the law into accord with the Constitution as amended by the Seventh Amendment Act, 1956. It was in exercise of this power under Art. 372A that section 3(58) of the General Clauses Act was amended, so that, thereafter, "State" as defined included Union Territories also. The new definition of "State" in section 3(58) of the General Clauses Act as a result of modifications and adaptations under Art. 372A would, no doubt apply to the interpretation of all laws of Parliament, but it cannot apply to the interpretation of the Constitution, because Art. 367 was not amended and it was not laid down that the General Clauses Act, as adapted or modified under any Article other than Art. 372, will also apply to the interpretation of the Constitution. Since, until its amendment in 1956 section 3(58) of the General Clauses Act did not define "State" as including Union Territories for purposes of interpretation of Art. 54, the Union Territories cannot be treated as included in the word "State".

The second reason why it must be held that members of Legislatures of Union Territories cannot form part of the electoral college under Art. 54 is that Article confines the electoral college to members of Legislative Assemblies of the States and there are no Legislative Assemblies in the Union Territories. Under Art. 168, for every State there is to be a Legislature which shall consist of the Governor, in certain States two Houses, and in some other States one House. The Article further lays down that, where there are two Houses of Legislature, one is to be known as the Legislative Council and the other as the Legislative Assembly and, where there is only one House, it is to be known as the Legislative Assembly. On the face of it, only members of Houses known as Legislative Assemblies under Art. 168 can be members of the Electoral College under Art.

54. In the case of Union Territories, the provision for Legislatures is contained in Art. 239A, but that Article, does not mention that any House of the Legislature created for any of the Union Territories will be known as a Legislative Assembly. All that Article lays down is that Parliament may, by law, create a body, whether elected or partly nominated and partly elected to function as a Legislature for the Union Territory. Such a Legislature created by Parliament is not a Legislative Assembly as contemplated by Art. 168 or Art. 54. Members of Legislatures created for Union Territories under Art. 239A cannot, therefore, be held to be members of Legislative Assemblies of States. They were, therefore, rightly excluded from the electoral college, so that the issue are decided against the election petitioners. Issues Nos. 9, 9A and 10 in Election Petition No. 5 of 1969. The nomination paper of Shri Phul Singh, petitioner in this election petition was rejected on the ground that his nomination paper was not signed either by a proposer or a seconder, so that the nomination paper did not comply with the requirements of section 5(2) of the Act and was liable to be rejected under Rule 6(3) of the Rules. This petition was argued by Shri Phul Singh in person, and the only argument that was advanced by him was that section 5 (2) of the Act, requiring that there must be a nomination signed by two electors as proposer and seconder, is ultra vires the Constitution. According to him, he possessed all the qualifications for being a candidate laid down in Art.

58. He had proved that he was an elector registered in a Parliamentary constituency by producing a certified copy of the entry relating to him in the electoral roll. He had also produced a certificate that he had resigned from government service and was not holding an office of profit under the Government. He relied on the electoral roll to show that he was a citizen of India. He also produced a copy of his High School certificate showing that he was not less than 35 years of age. In these circumstances, according to him, his nomination paper could not be rejected on the ground that he had not been nominated by two electors as proposer and seconder. On the face of it his argument that section 5 (2) of the Act contravenes Art. 58 or any other Article of the Constitution has no force at all. Section 5 (2) of the Act was enacted by Parliament in exercise of its power of regulating all matters relating to or connected with the election of a President or Vice-President and, in exercise of this power, Parliament was fully competent to lay down how a candidate, otherwise qualified, must become a candidate by seeking nomination by two electors and to prescribe the detailed subsequent procedure leading up to the polling and declaration of result. The requirement laid down by Parliament that every person must 'be nominated by two electors as proposer and seconder is a reasonable requirement relating to regulation of election to the office of a President and cannot be held to be a curtailment of the right of a qualified candidate to stand as a candidate under Art. 58. In these circumstances, the ground, on which the election petition has been filed, fails and,

consequently, the petition is liable to be dismissed.

Issue No. 8 in Election Petitions Nos. 4 and 5 of 1969. This issue was raised by the petitioners on the plea that Part III of the Act, which includes section 18, is ultra vires Art. 71 (1) of the Constitution, so that the petitioners are entitled to challenge an election of the President on grounds other than those mentioned in section 18 of the Act. This contention fails in view of the finding on Issue No. 5 that Part III of the Act is not ultra vires Art. 71 of the Constitution and that Parliament did not act contrary to the provisions of the Constitution in limiting the grounds of challenge of an election in an election petition by enumerating them in section 18 of the Act. Consequently, the first, part of Issue No. 8 has to be answered in the negative, holding that the petitioners are not entitled to dispute the election of the respondent on grounds other than those mentioned in section 18 of the Act. The other parts of the issue, as a consequence, do not arise at all. The issue is answered against the petitioners.

Issues Nos. 9, 9A and 10 in Election Petition No. 5 of 1969. These issues are based on the allegations made in paragraph 15 of the petition in which there is, first, a general charge that the offence of bribery was freely committed at the election by the supporters of the respondent (returned candidate), with his connivance, with the object of inducing the electors to exercise their vote in favour of the respondent. With this object, gratification was offered and given to them. This general allegation is followed by a specific instance in which- it is mentioned that a licence for setting up an industry in Polyester Fibre was to be granted by the Government of India. The Punjab State Government also applied for the licence. The licence, was, however, refused to the public sector and was, instead, granted to a private limited company in which Shri Sita Ram Jaipuria, a Member of the Rajya Sabha, who was also an influential elector, had financial interest. It was alleged that this licence was granted to the Company as a gratification with the object of inducing Shri Sita Ram Jaipuria and the electors under his influence to exercise their vote in favour of the respondent and against Shri Sanjiva Reddy, in whose favour they were intending to vote earlier. According to the petitioners, this licence was granted during the election period. A further allegation was made that one Shri Kanwar Lal Gupta, a Member of Parliament, wrote a letter to the Election Commission stating that money was being offered to some members to vote for the respondent; and, from this, it was also clear that the offence of bribery was rampant during the elections. So far as this second allegation relating to the letter of Shri Kanwar Lal Gupta, Member of Parliament, is concerned, no evidence was allowed to be tendered, on it on 'behalf of the petitioners, because the allegation was in a very general form stating that the offence of bribery was rampant; and this pleading was also based solely on a letter written to the Election Commission. No specific instances were cited and no particulars were given. On the face of it, a general allegation that bribery was rampant in the elections could not be made the subject-matter of a specific charge of commission of offence of bribery. Evidence was allowed to be led on the first charge which, if the facts had been proved to be true, could possibly constitute the offence of 'bribery. If, in fact, the licence had been granted to a private limited company with the specific purpose of obtaining the vote of Shri Sita Ram Jaipuria, an elector and a Member of Parliament, for the respondent, that could constitute bribery. However, from the evidence led on this issue on behalf of the petitioners themselves, it appears that no case at all of commission of the offence of bribery during the election period could possibly be established; and that appears to be the reason why, when argu-

ments were heard by the Court after the evidence had been recorded, counsel for the petitioners did not even try to argue that this offence of bribery had been established. The then Chief Minister of Punjab, Sardar Gurnam Singh, and the Director of Industries, Punjab, were examined as witnesses on behalf of the petitioners to prove that an application for grant of the licence for Polyester Fibre Factory was sent to the 'Central Government on behalf of the Industrial Development Corporation which was a public limited concern owned by the Punjab Government. The petitioners also examined the Director of Industries, U.P., the Registrar of Companies, U.P., and the Secretary of the Swadeshi Cotton Mills Ltd., Kanpur, to prove that an application was also presented for the licence for the same factory on behalf of Swadeshi Cotton Mills in which Shri Sita Ram Jaipuria holds shares in his own name and a large number of shares are also held by his wife, his children, and other close relatives. The Secretary to the Government of India, Ministry of Industrial Development, and the Under Secretary to the Government of India, Ministry of Petroleum And Chemicals, were also produced as witnesses and they proved the fact that the licence for the Polyester Fibre Factory was granted in favour of Swadeshi Cotton Mills in preference to the public sector company, the Industrial Development Corporation owned by the Punjab Government. The evidence of the latter two witnesses also, however, proved the circumstances in which the licence was granted to the Swadeshi Cotton Mills, Kanpur, disregarding the claim of the Industrial Development Corporation of Punjab. According to the evidence of these two witnesses, the procedure obtaining is that all, applications for such licences are first processed in the relevant Ministries and are examined and completed if any further material is to be obtained. The Administrative Ministry, which in this case was the Ministry of Petroleum and Chemicals, prepares a note showing the various factors relating to each application which require to be taken into consideration. Thereafter, these applications come up for consideration before a sub- committee of the Licensing Committee of the Government of India. The Licensing Committee is a large body which includes amongst its members Secretaries of various Ministries as well as representatives of State Governments. This Committee appoints sub-committees for licences concerned with specific Ministries of the Government. In the case of the Polyester Fibre Factory, the meeting of the sub- committee took place on the 7th July, 1969 when the decision was taken to grant the licence to Swadeshi Cotton Mills, Kanpur. In accordance with the rules, this decision of the sub-committee was submitted to the Minister in charge of the Ministry of Industrial Development who gave his approval in the second week of July. It was subsequently that a letter of intent for granting the licence to Swadeshi Cotton Mills was issued on behalf of the Government of India on 24th July, 1969.

According to the procedure prevailing, any parties, who were claimants for licence and whose claims were rejected, had a right to make a representation after the issue of the letter of intent and their representation had to be considered by the full Licensing Committee. The meeting of the full Licensing Committee was actually held on the 13th November, 1969. At this meeting, representatives of the U.P. Government as well as the Punjab Government were present and they argued the cases on 'behalf of the two parties from their States, viz., the Swadeshi Cotton Mills Ltd., Kanpur, and the Industrial Development Corporation, Punjab. It appears that it was on the basis of the fact that the letter of intent was issued on 24th July, 1969 that this charge of bribery was put forward by alleging that the licence was granted to Swadeshi Cotton Mills during the election period. As has been indicated earlier, the decision about the grant of licence to Swadeshi Cotton Mills was taken by the sub- committee on the 7th July, 1969, and even the Minister in charge of the Ministry

of Industrial Development gave his approval in the, second week of July. The candidature of Shri Sanjiva Reddy for the office of the President was decided upon by the Parliamentary Board of the Congress on 12th July, 1969, and the respondent announced his candidature for the first time on 13th July, 1969, which was the last but one day before the close of the second week of July. On the face of it, the grant of the licence to Swadeshi Cotton Mills could not possibly have any relation to the candidature of either Shri Sanjiva Reddy or the respondent for the office of the President, and it is impossible to accept that the licence was granted to Swadeshi Cotton Mills for the purpose of inducing Shri Sita Ram Jaipuria to vote and exercise his influence in favour of the respondent. The grant of the licence was in due course in accordance with the procedure prevailing in the Ministry of the Government of India and had no relation at all with the candidature of the respondent for the office of the President which, in fact, was announced after that decision had already been arrived at. Consequently, the conclusion follows that no offence of bribery was committed in the matter of grant of licence for the Polyester Fibre Factory to Swadeshi Cotton Mills; and this ground for setting aside the election of the respondent, therefore, fails and is rejected.

Issue No. 4 (a), (b) & (c) in Election Petitions Nos. 4 and 5 of 1969.

This issue. relates to the challenge to the validity of the election of the respondent on the ground of commission of a number of offences of undue influence under section 18 (1)

(a) and (b) (i) of the Act which lays down that, if the Supreme Court is of opinion--

(a) that the offence of bribery or undue influence at the election has been committed by the returned candidate or by any person with the connivance of the returned candidate; or

(b) that the result of the election has been materially affected-

(i) by reason that the offence of bribery or undue influence at the election has been committed by any person who is neither the returned candidate nor a person acting with his connivance, the Supreme Court shall declare the election of the returned candidate to be void. Section 18(2) gives the definition of the words "bribery and undue influence" by laying down that, for the purposes of this section, the offences of bribery and undue influence at an election have the same meaning as in Chapter IX-A of the Indian Penal Code. In the Indian Penal Code, section 171C which defines "undue influence" is as follows "171C. (1) Whoever voluntarily interferes or attempts to interfere with the free exercise of any electoral right commits the offence of undue influence at an election.

(2) Without prejudice to the generality of the provisions of sub-section (1), whoever-

(a) threatens any candidate or voter, or any person in whom a candidate or voter is interested, with injury of any kind, or

(b) induces or attempts to induce a candidate or voter to believe that he or any person in whom he is interested will become or will be rendered an object of Divine displeasure or of spiritual censure.

shall be deemed to interfere with the free exercise of the electoral right of such candidate or voter, within the meaning of sub- section (1).

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

To appreciate the significance of this definition, reference may also be made to clause (b) of section 171A which defines "electoral right" as meaning the right of a person to stand, or not to stand as, or to withdraw from being, a candidate or to vote or refrain from voting at an election. The definition of "undue influence" also uses the word "injury" in section 171C(2)

(a), and this word has also been given a special meaning under the Indian Penal Code, having been defined in section 44 as denoting any harm whatever illegally caused to any person in body, mind, reputation or property". In order to decide whether the various allegations made in the two election petitions do constitute the commission of the offence of undue influence, it is necessary to understand properly what acts constitute undue influence as defined in section 171C of the Indian Penal Code. Sub- section (1) of section 171C, in general terms, makes any act an undue influence it interferes or attempts to interfere with the free exercise of any electoral right, and if it is committed voluntarily. The question has arisen what acts can be held to interfere with the free exercise of an electoral right. We are here concerned with the electoral right of a voter which, according to the definition in s. 171A(b), is the right to vote or refrain from voting. Undue influence can be held to be committed if the person charged with the offence interferes or attempts to interfere with the free exercise of this right of voting or refraining from voting.' When an elector exercises the right of vote, it can be envisaged that he goes through the mental process of first taking a decision that he will vote in favour of a particular candidate and, thereafter, having made up his mind, he has to go and exercise that electoral right by casting the vote in favour of the candidate chosen by him. The language used in section 171C indicates that the offence of undue influence comes in at the second stage when the offender interferes or attempts to interfere with the free exercise of that choice of voting in accordance with the decision already taken by the voter. It therefore, follows that, if Any acts are done which merely influence the voter in making his choice between one candidate or another, they will not amount to interference with the free exercise of the electoral right. In fact, all canvassing that is carried on and which is considered legitimate is intended to influence the choice of a voter at the first stage and that is quite permissible. Once the choice has been made by a voter, there should be no interference with the free exercise by him of that choice by actually casting the vote, or, in the alternative, there may be a case where a voter may decide that he will not vote for any candidate at all, but some acts are done which compel him to cast his vote. It is in such cases that the offence of undue influence will be held to have been committed. The language used in the definition of "undue influence" implies that an offence of undue influence will be held to have been committed if the elector, having made up his mind to cast a vote for a particular candidate, does not do so because of the act of the offender; and this can only be if he is under a threat or fear of some adverse consequence. Whenever any threat of adverse consequence is given, it will tend to divert the elector from freely exercising his electoral right by voting for the candidate chosen by him for the purpose. In a case where the voter is threatened with an injury as defined in the Indian Penal Code, it has to

be deemed under section 171C (2) (a) that it interferes with the free exercise of the electoral right of the voter; and the same applies if the elector is induced or attempt is made to induce him to believe that he or any person in whom he is interested will become or will be rendered an object of Divine displeasure or (A spiritual censure. In the first case, under clause (a), it is a temporal harm illegally caused to the person, in body, mind, reputation or property, while, in the second case. under clause (b), the interference is because of the fear of becoming an object of Divine displeasure or of spiritual censure. There can, however, be cases where the threat may not be of an injury as defined in section 44, J.P.C., where the harm caused must be illegal. Cases can arise where there may be no illegality in the threatened consequence to the voter and, yet, it may interfere with the free exercise of his right to vote. An instance that can be cited is where a father may threaten to disinherit his son in respect of property solely owned by the father unless his son voted for a particular candidate or refrained from voting for some other candidate. The consequence of non-compliance with the wishes of the father would be the loss of inheritance to the son which is not an injury as defined in section 44, I.P.C. Such an attempt by the father would clearly amount to exercise of undue influence by him on his son. But, in cases where the only act done is for the purpose of convincing the voter that a particular candidate is not the proper candidate to whom the vote should be given, that act cannot be held to be one which interferes with the free exercise of the electoral, right.

It has, however, been argued that there may be a case where such virulent propaganda may be carried on against a candidate as may cloud the mind and judgment of the voters and almost compel them to come to a decision that they should not vote for that particular candidate. It was urged that, in such a case, it should be held that undue influence was exercised on the voters. In considering this proposition, various aspects have to be kept in view. The first is that, if it is held that propaganda adverse to a candidate can amount to undue influence, it will be almost impossible to draw a line and differentiate between legitimate propaganda which will amount to undue influence, and that which will not. Then comes the question of the reverse type of propaganda where a particular candidate is so highly praised that voters are influenced to the extent of considering him an excellent person well above all other candidates; and the question will be whether such an influence on the mind of a voter can be held to be undue influence. More important than all these aspects is the scheme of the law and the language used in it which, in my opinion, very clearly show that mere propaganda against a candidate cannot be held to be exercise of undue influence. The word "free" is used in section 171C I.P.C., as qualifying "exercise" and not as qualifying the word "vote". If undue influence had been defined as interference with the exercise of free vote, possibly the definition could have been construed as indicating that influence brought on the mind of a voter so as to change the manner of his voting by affecting his choice and judgment in selecting the candidate for whom he is going to cast his vote, would be comprised within undue influence. The word "free" having been used as qualifying the word "exercise" gives the indication that the freedom envisaged is to cast the vote in accordance with the choice already arrived at and, if such freedom of casting the vote in that manner is interfered with, the offence of undue influence will be held to have been committed. In Words and Phrases, Permanent Edition, Vol. 17A by West Publishing Company, the meaning of the word "free" in various contexts accepted in America has been given, and the relevant meaning which can assist is in the following words :-

"Within the constitutional provision, elections are "free"

when the voters are subjected to no intimidation or improper influence, and whenever every voter is allowed to vote as his own judgment and conscience dictate." This meaning clearly indicates that the question of freedom actually arises at the stage when a voter has already exercised his judgment and conscience, has decided which candidate he will vote for, and is then allowed to cast his vote freely without any interference in the form of intimidation or improper influence.

A very important aspect in considering this argument is that whatever meaning is given to the expression "undue influence" in the Act will also apply when interpreting the provisions of the Indian Penal Code, because the Act imports the definition of "undue influence" from section 171-C of the Code. In the Indian Penal Code, a new Chapter IXA was introduced by the Indian Elections Offences and Inquiries Act 39 of 1920. The statement of objects and reasons attached to the Bill which culminated in that Act explained this provision by stating that "undue influence at an election is defined as the voluntary interference or attempted interference with the right of any person to stand, or not to stand, or withdraw from being, a candidate, or to vote or refrain from voting. This covers all threats of injury to person or property and all illegal methods of persuasion and any interference with the liberty of the candidates or the electors."

The language used in section 171C was, thus, intended to cover only cases where the interference comes at the stage when the elector must have liberty to cast his vote freely, having already made up his mind how that vote is going to be cast. It is inter-

ference at this stage that was envisaged as amounting to undue influence.

The subject of influence at the stage of making a choice was dealt with in Chapter IXA of the Indian Penal Code under a separate and distinct provision which is contained in section 171G and is as follows "Whoever with intent to affect the result of an election makes or publishes any statement purporting to be a statement of fact which is false and which he either knows or believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate, shall be punished with fine."

This section clearly recognises that, at elections there is bound to be propaganda in which candidates or their supporters may be issuing statements so as to influence the voters against their rival candidates, and it limits the prohibition by law to only those statements of fact which are false, or believed to be false, or believed not to be true, in relation to the personal character or conduct of any candidate. Propaganda can be not only by attacking the personal character or conduct of a candidate, but even his political or public character and activities. On the face of it, section 171G envisages that propaganda of the latter type will not be treated as an offence. Only when the propaganda is in the form of false statements of fact relating to the personal character or conduct of the candidate that the law will punish the person indulging in it by making him liable to payment of fine. These false statements about the personal character or conduct of the candidate may, of course, be scurrilous and foul, but, even then, the offence committed would fall under section 171G, I.P.C., which makes the offence punishable with fine only. On the other hand, an offence of undue influence as defined in section 171C, I.P.C., has been made punishable under section 171F, I.P.C., with imprisonment of either description for a term which may extend to one year or with fine. or

with both. If it is held that false propaganda against personal character or conduct of a candidate can amount to undue influence, the person indulging in that propaganda would become liable to punishment under section 171F, I.P.C., which has been considered a more serious offence by being made punishable with imprisonment in addition to, or, in the alternative, with fine. This inter-

pretation would thus make section 171G, I.P.C., totally ineffective and otiose. If the false statements as to personal character or conduct are held to be punishable under section 171F as constituting offence of undue influence, there would be no 'point in prosecuting the same person for the less serious offence under section 171G. In fact, section 171G would be fully covered by section 171F and, consequently, the interpretation sought to be urged in these petitions has to be rejected.

It is true that, in the Act, there is no provision indicating that 'Publication by a candidate, or by any other person with his connivance, of a statement of fact which is false in relation to the personal character or conduct of another candidate will be deemed to be a corrupt practice on the commission of which an election can be declared void. Such omission in the Act cannot, however, be a good reason for enlarging the meaning of the offence of undue influence so as to hold that an election of a President or Vice- President must also be set aside on such a ground. It may be noticed in this connection that, in the Representation of the People Act, 1951, there is a specific provision contained in section 123 (4) laying down that a corrupt practice is constituted by the publication by a candidate or his agent or by any other person, with the consent of a candidate or his election agent, 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 any candidature, being a statement reasonably calculated to prejudice, the prospects of that candidate's election. In the Representation of the People Act, 1951 also, undue influence is defined in almost the same language as that contained in section 17 IC. I.P.C. In that Act, therefore, an election can be declared void not only on the ground of commission of the corrupt practice of undue influence, but also on the ground of publication of false propaganda as to the personal character or conduct of a candidate. Parliament, however, chose not to include any such provision in the Act which was passed when the Representation of the People Act. 1951 had already been enacted and enforced. The Court is not concerned with the reasons which weighed with the Parliament in making such an omission in the Act when a similar provision had been enacted in the earlier enactment in respect of elections to the Central and State Legislatures. The omission may be deliberate or accidental, but, in either case, it is not for the courts to attempt to fill up this gap by enlarging the meaning to be given to the expression "undue influence"

which is the corrupt practice included in the Act as a ground for setting aside the election. It is clear from the scheme of Chapter IXA of the Indian Penal Code that false propaganda as to the personal character and conduct of a candidate was created as a separate offence and the definition given in section 171C of "undue influence" was not intended to lay down that such propaganda will amount to interference with the free exercise of electoral right so as to constitute undue influence.

The only case of this Court dealing with the question of undue influence under the Act is reported in *Shri Baburao Patel & Others v. Dr. Zakir Husain & Others*(1), where

the, Court had to consider the distinction between canvassing and exercise of undue influence and held "It is difficult to lay down in general terms where mere canvassing ends and interference or attempt at interference with the free exercise of any electoral right beings. That is a matter to be determined in each case; but there can be no doubt that, if what is done is merely canvassing, it would not be undue influence. As subsection (3) of s. 171-C shows, the mere exercise of a legal right without intent to interfere with an electoral right would not be undue influence."

The Court, after reviewing the relevant case law under the Representation of the People Act, then proceeded to hold "It will be seen from the above review of the cases relating to undue influence that it has been consistently held in this country that it is open to Ministers to canvass for candidates of their party standing for election. Such canvassing does not amount to undue influence but is proper use of the Minister's right to ask the public to support candidates belonging to the Minister's party. It is only where a Minister abuses his position as such and goes beyond merely asking for support for candidates belonging to his party that a question of undue influence may arise. But so long as the Minister only asks the electors to vote for a particular candidate belonging to his party and puts forward before the public the merits of his candidate it cannot be said that by merely making such request to the electorate the Minister exercises undue influence. The fact that the Minister's request was addressed in the form of what is called a whip is also immaterial so long as it is clear that there is no compulsion on the electorate to vote in the manner indicated." In that case, the Court thus envisaged that the question of undue influence will arise if there is some sort of compulsion on the electorate to vote in the manner indicated by the person alleged to (1) [1968] 2 S.C.R. 133.

have committed that corrupt practice, and a question of such compulsion can obviously arise only when a voter, having made his choice as to the person for whom he will cast his vote, is under some pressure to vote for another candidate owing to the undue influence exercised on him. The nature of interference, which would constitute undue influence, was further clarified when dealing with the letters issued by the Chief Whip of the Congress Party requesting members not to cast their second preference vote, by stating :-

"Such a request or advice does not, in our opinion, interfere with the free exercise of their electoral right for the electors still would be free to do what they desired in spite of the advice."

The Court, thus, envisaged that undue influence is exercised when an elector is not free to do what he desires, while influencing his desire will not be exercise of undue influence.

It has already been indicated above that the scheme of Chapter IXA of the Indian Penal Code and section 123 of the Representation of the People Act is quite similar inasmuch as, in both these enactments, undue influence is defined in almost identical language and the publication of false statements as to the personal character of a candidate has been separately made either a criminal offence or a corrupt practice in practically the same language. Consequently, some assistance can be derived from the interpretation that has been given to the provisions contained in section 123, subsection (2) and (4) of the Representation of the People Act, 1951. Dealing with this aspect in the

case of *Rain Dial v. Sant Lal and Others*(1), this Court first pointed out that the law in England relating to undue influence at elections is not the same as the law in India and, consequently, proceeded to interpret the law here without taking into account the principles laid down in England. In that case, the question arose whether, what a religious leader had done by issuing a Hukam or Farman. amounted to undue influence or not. The Court held:-

"There cannot be the least doubt that a religious leader has the right freely to express his opinion on the comparative merits of the contesting candidates and to canvass for such of them as he considers worthy of the confidence of the electors. In other words, the religious leader has a right to exercise his influence in favour of any particular candidate by voting for him and by canvassing votes of others for him. He has a right to express his opinion on the individual merits of the candidates. Such a course of conduct on his part will only be a use (1) [1959] Supl. 2 S.C.R. 748.

of his great influence amongst a particular section of the voters in the constituency; but it will amount to an abuse of his great influence if the words he uses in a document, or utters in his speeches, leave no choice to the persons addressed by him, in the exercise of their electoral rights. If the religious head had said that he preferred the appellant to the other candidate, because, in his opinion, he was more worthy of the confidence of the electors for certain reasons, good, bad or indifferent, and addressed words to that effect to persons who were amenable to his influence, he would be within his rights, and his influence, however great, could not be said to have been misused. But in the instant case, as it appears, according to the findings of the High Court, in agreement with the Tribunal, that the religious leader practically left no choice to the Namdhari electors, not only by issuing the hukam or farman, as contained in Ext. P. 1, quoted above, but also by his speeches, to the effect that they must vote for the appellant, implying that disobedience of his mandate would carry divine displeasure or spiritual censure, the case is clearly brought within the purview of the second paragraph of the proviso to section 123 (2) of the Act."

In that case, thus, the Court envisaged. that the 'Hukam or 'Farman' issued by the religious leader was a mandate, the disobedience of which would carry divine displeasure or spiritual censure, and it was for this reason that it was held that corrupt practice of undue influence had been committed.

In the case of *Inder Lal v. Lal Singh* (1), this Court explained the scope and purpose of sub-s. (4) of section 123 of the Representation of the People Act by pointing out that. for the protection of the constituency against acts which would be fatal to the freedom of election, the statute had provided for the inclusion of tile circulation of false statements concerning the private character of a candidate amongst corrupt practices, and dissemination of false statements about the personal character of a candidate had been constituted into a corrupt practice. This corrupt practice was envisaged as separate and distinct from the corrupt practice of undue influence mentioned in section 123(2) of that Act.

In the case of *Lalrouktung v. Haokholal Thangjom and Another*(2), this Court dealt with a case where there had been an assault close to the polling station after certain pamphlets had been issued, wherein threats were freely canvassed and exhorta-

(1) [1962] Supl. 3 S.C.R. 114.

(2) Civil Appeal No. 1315/68 decided on 9.1.69.

tions made that those, who opposed the candidates supported by the two organisations (which issued the pamphlets), would not be forgotten nor spared. The Court then proceeded to hold :-

"In the light of propaganda of this nature carried on before the polling days, it is, impossible to view the assault as an isolated incident nor can it be legitimately argued that the conclusion of the Judicial Commissioner that it was a culmination of those threats was either an unreasonable or an unwarranted conclusion. There can be no doubt that such rowdyism at a polling station was bound to deter voters from coming to the polling station to exercise freely their franchise. We have no doubt that the assault by the appellant's polling agent attracted section 123(2), proviso (a), and that also rendered the election void."

This was, again a case where the exercise of their electoral right by the voters was interfered by physical act of assault and threat on voters who intended to vote for the:

rival candidate.

The last case of this Court which may be referred is the decision in *Manubhai Nandlal Amersey v. Popatlal Manilal Joshi and Others*(1), in which the effect of a speech came up for consideration and it was held "The actual effect of the speech is not material. Corrupt practice is committed if the, speech is calculated to interfere with the free exercise of electoral right and to leave no choice to the electors in the matter.. In considering the speeches, the status of the speaker and the character of the audience are relevant considerations."

This case also, thus, envisaged that there must be some element 'of compulsion on the voter to vote in a particular manner before the act said to be a corrupt practice can be held to amount to undue influence.

Coming to the decisions of the High Courts, the first case that may be cited is the decision of the Orissa High Court in *Radha- kanta Mishra v. Nityananda Mahapatra and Another*(2). Barman. J. explained undue influence in the following words :-

"A voter must be able to freely exercise his electoral right. He must be a free agent. All influences are not necessarily undue or unlawful. Legitimate exercise of influence by a political party or association or even an (1) A.I.R 1969 S.C. 734.

(2) 19 E.L.R. 203.

individual should not be confused with undue influence. Persuasion may be, quite legitimate and may be fairly pressed on the voters. On the other hand, pressure of whatever character, whether acting on the fears, threat, etc., if so exercised as to over-power the volition without convincing the judgment is a specie% of restraint which interferes with the free exercise of electoral right. In such an atmosphere, the free play of the elector's judgment, discretion or wishes is overborne and this will constitute undue influence, though no force is either used or threatened. It is not necessary to establish that actual violence had been used or even threatened. Methods of inducement which are so powerful as to leave no free will to the voter in the exercise of his choice may amount to undue influence. Imaginary terror may have been created sufficient to deprive him of free agency."

He, thus, distinguished between influence which is exercised for convincing the judgment of a voter, and influence the result of which is that the free play of the elector's judgment, discretion or wishes is overborne and the elector is left no free will to exercise his choice. In this decision, thus, the distinction, as indicated above, is clearly brought out. In that case, however, a picture with a caption had been published as a part of a cover of booklet. and it was held that its publication amounted to exercise of undue influence. The reason is indicated when the learned Judge, dealing with this poster, _held :-

"The picture with the caption, as it stood, was intended to be made catchy with an ulterior motive and was deliberately published in that asked form in order to create a feeling of terror, fear and hatred and was such a compelling appeal to the mind of the voters as to amount to interference with the free exercise of voters' electoral right."

The picture in question showed a dead boy with a caption in Oriya which, translated in English, was to the effect "Do not vote for the Congress who killed Sahid Sunil". That picture, thus, did not contain any false statement or representation as to the personal character of a candidate; but Barman, J., held :-

"The picture of the dead boy with the caption was a direct charge against the Congress that it killed the deceased boy. This was a misrepresentating of fact. It was as a result of firing by the police that the boy unfortunately got involved. We do not know whether the Congress Party took a stern view of the firing, whether the Congress Party itself condemned the firing, and whether ultimately those responsible for the firing were reprimanded and punished for the unfortunate incident. The catchy caption that the Congress killed the boy was false repre- sentation made by the respondent No. 1 with intent to strike terror into the mind of the voters and thereby to interfere with the free exercise of electoral right of such terror- stricken voters. The picture with the caption was a distortion of a situation for political ends done with the intention as aforesaid. It was an artful device to catch the imagination of the voters. It terrorised the voters and was likely to create in their mind a feeling of terror, fear, hatred or strong prejudice against the Congress. In the caption under the dead boy's picture was a veiled threat to the voters that if they voted for the Congress who were capable of killing, then such Congress, so retained in power, would again,- as it actually did in the past, resort to such killing of men in which the voters themselves

or their children might also be killed in the same way as it was openly demonstrated by the picture of the dead boy with the caption. It at least did create or was likely to create or had the tendency to create terror and an unknown fear in the mind of the voters. The picture of the dead boy with the caption frightened the voters or was likely to frighten them and it was intended to overawe voters which interfered or was likely to interfere or had the tendency to interfere with the free exercise of electoral right of the voters."

It will, thus, be seen that the main reason for holding that the publication of the picture amounted to exercise of undue influence was that it created terror and fear in the minds of voters of personal harm to themselves or their children in case they voted for the Congress candidate. The publication of the picture was not field to be undue influence or interference with the electoral right because it contained false propaganda against the candidate or the Congress Party, but because of the element of compulsion which was envisaged as arising in the minds of the voters not to vote for the Congress because of the fear of consequences which might be listed on themselves or their children in case they vote for the Congress. Barman, J., in this connection, also referred to the decisions of Election Tribunals in *Sardul Singh v. Hukam Singh*(1), and *Jujhar Singh v. Bhairon Lall*(2) and agreed with the principles laid down in those cases. I shall indicate later the (1) 6 E.L.R. 316. (2) 7 E.L.R. 45-.

ratio of those two decisions.' The other two Judges, constituting the majority, differed from Barman, J., and held that the publication of the picture did not amount to undue influence, because, in their opinion, no inference could be drawn that the publication of this picture was intended to create a fear in the minds of the voters. Rao, J., dealt with the submission of Mr. Rath, the counsel, that a look at the photo will make the voter think that, if he votes for the Congress Party during whose office the killing took place, he would be similarly killed and therefore it created a fear in his mind and thus interferes with the free exercise of the electoral right. He rejected it by saying that, in his opinion, this was a farfetched argument. He further held :-

"The picture simply represents Sunil De after being shot at by the, police firing with the caption underneath "Do not vote for the Congress who killed Sahid Sunil". It does not say that, if the voter give their votes for the Congress, all the voters or some of them would be shot as Sunil De. Further, the shooting of Sunil De is known to everybody and that is on account of police firing in connection with the States Reorganisation Committee Report's disturbances, the voters therefore cannot be influenced to think by publication of this poster that if they voted for the Congress they would be shot at like that. It is also significant that there is nothing Mentioned about this poster in the election campaign in the booklet on whose cover the photo is printed. The respondent No. 1, therefore, could not have intended to cause fear in the minds of the voters by publication of exhibit 3 in order to interfere with the free exercise of their votes."

Das, J., dealt with this aspect as follows "Nothing has been stated in the body of exhibit 3 relating to this picture. The picture simply represented a dead person after being shot by the police firing with the caption: "Do not vote for the Congress who killed Saheed (Martyr) Sunil". Nowhere it was stated

if the voters gave their votes to the Congress they would be shot at as Sunil. The further fact is that Sunil De was shot at by the police firing in connection with the disturbance arising out of the recommendations of the States Reorganisation Commission of which the electors had known before. Thus, the voters cannot be said to have been influenced to think that if they voted for the Congress they would be shot at like Sunil. Hence, in my opinion, the respondent No. 1 could not have intended to cause any fear in the minds of the voters by the above publication to constitute interference with the free exercise of the electoral right of the voters."

The decisions by these two Judges are, of course, of no help; but, as indicated earlier, even the decision of Barman, J., is in line with the view taken above and does not indicate that mere false propaganda as to the personal character of a candidate or even relating to the party sponsoring the candidate can amount to the corrupt practice of undue influence.

The next case which may be cited is another decision of the Orissa. High Court in *Abdul Rahiman Khan v. Radha Krushna Biswas Roy*(1). In that case, the successful candidate had published a poem and the question arose whether the publication of that poem amounted to exercise of undue influence. The Court first, in general terms, dealt with the scope of undue influence by saying:-

"Section 123 of the Act is rather wide in its term and contemplates four distinct forms of interference with the free exercise of any electoral right, viz., direct interference, indirect interference, direct attempt at interference and indirect attempt at interference. There is nothing in the definition that such interference or attempt at interference should be by any method of compulsion. Evidently, the offence includes such interference or attempt to interfere by any method, and it definitely includes the method of inducement wherein there may not be any compulsion at all. The inducement again must be of such powerful type as would leave no free will to the voter in the exercise of his electoral right."

This general explanation does not appear to be inconsistent with the view taken above, because it was held that, even if there be no compulsion at all, the inducement must be of such powerful type as would leave no free will to the voter in the exercise of his electoral right. The freedom of will envisaged, obviously, is to vote in accordance with his choice. On the facts in that case, it was found that, in the poem, there were threats against Raja of Kalahandi in whom the defeated candidate was interested. After referring to the Raja of Kalahandi, the objectionable portion read as follows "Without any consideration for your own and others, you acted as a devil. Would anybody now be able to save you if you are beaten mercilessly? Having done all the above mischief, now you are appealing to the electors for their vote as a shameless person. If there (1) A.I.R. 1959 Orissa 183.

were a grain of shame left in you would not have progressed at all. You are a thief and a Badmas and you should not remain our land. You who belong to, the Ganatantra party are only fit for the gallows."

These words, clearly, contained a threat to the life and were, therefore, rightly held to amount to exercise of undue influence.

Similarly, another portion was to the following effect :

"The leader of your Party was making money by selling widows is well-known to the raiyas. Since there is not a bit of sense left in you are now seeking votes of these raiyats, of Koraput. They will no longer be dissuaded by your words."

It was further stated that :

"the raiyats of this Constituency are bound to take revenge on you. How dare you ask for their votes ?"

Again, the Court, in holding, that these publications amounted to exercise of undue influence, was fully justified, because there were clear threats against the life of the candidate.

The only other case of a High Court that requires to be noticed is the decision. of the Punjab High Court in *Amir Chand Tota Ram, Delhi v. Smt Sucheta Kriplani*(1). The Court expressed its view by holding :-

"The legal phrase "undue influence" denotes something legally wrong or violative of a legal duty. In order to establish undue influence, it must be proved that the influence was such as to deprive the person affected of the free exercise of his will. It must amount to; imposing a restraint on the will of another whereby he is prevented from doing what he wishes to do or is forced to do which he does not wish to do.

An advice, argument persuasion or solicitation cannot constitute undue influence. Honest intercession, even importunity, falls short of controlling a person's free exercise of his will. A persuasion, which leaves a person free to adopt his own course, is not undue influence. Otherwise a suggestion or an entreaty from somebody, held in esteem, could be treated as undue influence. In the absence of proof that a person has been, in consequence of the alleged influence, deprived of free agency no question of there being an undue influence arises.

It is not objectionable to exercise an influence by acts of kindness or appeals to the free reason and understanding. So long as the free agency of the other (1) A.I.R. 1961 Pb. 383.

person is not prevented or impaired by obtaining a domination over the mind of another, it cannot be deemed as an exercise of an undue influence. The essence of undue influence' 'is that a person is constrained to do against his will, but for the influence he would have refused to do if left to exercise his own judgment. It has to be shown that a person's volition had thus been controlled by another whereby he could not pursue his own inclination, being too weak to resist the importunity and in view of the pressure exercised on his mind he could not act intelligently and voluntarily and' had become subject to the will of the other who had thus obtained dominion over his mind."

This exposition of the scope of "undue influence" is also in line with the view taken above. It envisages that the corrupt practise of undue influence is committed when a person is constrained to do against his will. and is unable to act in accordance with his judgment. Such a position can only arise if the influence is brought on the person concerned after he has already formed his judgment and decided how he will exercise his electoral right. Propaganda for the purpose of influencing the judgment, even if undesirable, cannot be held to be undue influence, Coming to the cases of Election Tribunals, the earliest case that needs consideration is the decision in Sardal Singh Caveeshar v. Hukam Singh and Others (supra). In that case, the Tribunal held "It is not necessary that there should be any actual threat or physical compulsion held out, but the method of inducement as may be adopted should convey to the mind of the person addressed that non-compliance with the wishes of the person offering the inducement may result in physical or spiritual harm to himself or to any other person in whom he is interested. Some fear of harm resulting from noncompliance with the request, thus, seems to constitute an essential element in "undue influence".

On behalf of the petitioners, emphasis was laid on the decision of the Election Tribunal in Jujhar Singh v. Bhairon Lall & Others (supra).

In that case, it was held "It may be observed that an attempt to interfere by the method of compulsion is not necessary and that even the method of inducement may be sufficient, provided it be of such a powerful type as would leave no free, will to the voter in the exercise of his choice. In other words, actual physical compulsion is not necessary, but, positive mental compulsion may be enough to give rise to an undue influence."

After expressing this view, the Tribunal proceeded to hold that the publication of a particular poster amounted to exercise of undue influence. Referring to it, the Tribunal held :-

"The poster was, therefore, clearly designed not only to catch voters for respondent No. 1, but, also, to overawe voters, the majority of whom were men of no better intelligence than ordinary illiterate villagers and to create a feeling of positive prejudice, if not of terror as well, in their minds against the petitioner."

Reliance was placed primarily on the last part of this quotation where the Tribunal held that the creation of a feeling of positive prejudice in the minds of the voters can amount to undue influence. But this part of the sentence has to be read in conjunction with the earlier part where a clear inference was drawn that the poster was clearly designed to overawe the voters. This was the reason why the Tribunal held that the publication of the poster amounted to undue influence, though, when defining undue influence in general, the Tribunal had clearly stated that the inducement must be of such a powerful type as would leave no free will to the voters in the exercise of his choice. In stating this principle, the Tribunal was clearly referring to the stage when, having made his choice, the voter wants to exercise it in accordance with his free will and that free will is interfered with. The Tribunal's decision is also, thus, in line with the view taken above.

The next decision of a Tribunal, on which reliance has been placed is in Radha Krishna Shukla and Another v. Tara Chand Maheshwar and Others(1); but that decision appears to be of no help as, in

that case, replying on a English decision, the Tribunal held that, before a threat can be said to amount to undue influence, the question must be put, was it a serious and deliberate threat uttered with the intention of carrying it into effect, and proceeded to apply that test to the case before it. The Tribunal, therefore, dealt with a situation where there was clearly a threat to the voters. but even the threat in question contained in the slogan was held not to constitute corrupt practice, as there was nothing to show that the purpose of the slogan was to directly or indirectly interfere with any person's free exercise of his electoral right.

In *Amir Chand v. Smt. Sucheta Kripalani*(2), the Tribunal, after quoting the definition of "undue influence" contained in (1) E.L.R. 378. (2) 18 E.L.R. 209.

section 123(2) of the Representation of the People Act, 1951, held "The definition, no doubt, is in general terms but it has an element of compulsion and it is an abuse of influence that will constitute undue influence".

These remarks also do not go contrary to the view taken above.

The last case that requires notice is the decision of a Tribunal in *Kataria Takandas Hemrai v. Pinto Frederick Michael*(1) in which it was said "A candidate, or as a matter of fact, any person has every right to persuade people to vote in his favour at the election and in that respect he is further entitled to be even critical of the policy and the acts of the rival party or its candidate and that way it may as well be legitimate for them to influence the voters, provided they did not transgress the legitimate bounds of criticism. It is only undue influence which can be taken exception of, and, even though that term is wide enough to cover any interference with the exercise of the electoral right, one can justifiably call any act as an interference only when it has in it an element of compulsion so as to give way to free thinking in the exercise of the electoral rights of the voters."

This case also, therefore, envisaged some element of compulsion as a result of which a voter is unable to exercise his electoral right in accordance with his judgment and choice. None of the decisions rendered so far by the Courts or Tribunals in India, thus, go contrary to the view expressed above and, if at all, a majority of them are in line with it. It is in the light of this interpretation of what undue influence means that this Court has to proceed further to see which of the allegations made in the present petitions can amount to charges of undue influence and whether they have been established so as to vitiate the election.

The principal charge of undue influence, on which a mass of evidence has been led by the petitioners, relates to the publication of a pamphlet which contained scurrilous and vulgar allegations as to the personal character of Shri Sanjiva Reddy. It is not necessary for me to set out the details of the contents of that pamphlet. It is sufficient to mention that, apart from allegations against Shri Sanjiva Reddy, there were no 'other allegations in it which could amount to a threat of any adverse consequence to any voter in case he cast his vote in favour of Shri Reddy. Even (1) 18 E.L.R. 403.

in the evidence, no witness stated that, as a result of reading this pamphlet, he apprehended any adverse consequence either to himself or to anyone in whom he may be interested. No doubt, some witnesses stated that, on reading the pamphlet, they felt that, if Shri Sanjiva Reddy is elected as President, the Rashtrapati Bhavan may become a brothel; but that also does not amount to a threat of a nature which would constitute undue influence as explained above. Consequently, the publication of this pamphlet cannot constitute undue influence, so that it is totally unnecessary to go into the question whether it was printed, published and distributed at all; if so, by whom, and, further, whether such printing, publication or distribution was or was not with the connivance of the respondent. As I have held earlier, in the Act there is no provision made for setting aside election on the ground of publication of false statements as to the personal conduct or character of a candidate even if it affects his prospects in the election, so that no evidence need have been taken with regard to the printing, publication or distribution of this pamphlet or with regard to the question as to whether there was any connivance by the respondent in its printing, publication or distribution. The challenge to the election of the respondent based on this petition fails on this preliminary ground. However, I may add that, having had the benefit of reading the judgment proposed to be delivered by my brother Sikri, J., on these issues, I agree with his assessment of the evidence tendered by the parties and the findings recorded by him. These findings of fact are to the effect that, though the pamphlet was distributed by post and in the Central Hall of Parliament, it has not been proved that this distribution was with the connivance of the respondent or that the distribution materially affected the result of the election. Consequently, even on the assumption that the publication of this pamphlet could constitute undue influence, the election of the respondent is not liable to be set aside.

Apart from this ground based on the pamphlet, a number of other instances of exercise of undue influence were also cited and relied upon in these two election petitions. These grounds have also been dealt with by my brother Sikri, J., and some by my brother Mitter, J. I agree with their reasons and findings for holding that none of these charges of undue influence has been established, so that the challenge to the election of the respondent on the ground of exercise of undue influence fails altogether.

I also agree with the order directing parties to bear their own costs and the reasons for that order given by my brother Sikri, J., in his judgment.

Issue No. 7 in Election Petition No. 1 of 1969, Issue No. 9 in Election Petition No. 4 of 1969, and Issue No. 11 in Election Petition No. 5 of 1969.

As a result of the findings on other issues, the petitioners in none of these petitions are entitled to any relief, as no ground has been made out for declaring the election of the respondent as void.

Mitter' J. I have had the benefit of reading the judgments of my colleagues. The facts leading up to the filing of these petitions and the issues settled therein have been set out in the judgement of my learned colleague, Bhargava, J. I am in agreement with him in his conclusion on issues other than issue No. 4 in Election Petitions 4 and 5 of 1969. I regret to have to differ from my other colleagues on this issue. As Petition No. 5 is more comprehensive than Petition No. 4 I prefer to refer to the

allegations made in Petition No. 5 alone. Leaving out of account the technical grounds on which the election has been challenged, the petitioners have asked for a declaration that the election be declared void on the following grounds :

(a) that the offence of undue influence at the election had been committed by the returned candidate (hereinafter referred to as the 'respondent') and by his supporters with the connivance of the respondent as mentioned in paragraph 8

(a) and various sub-paragraphs of 13 (b) and (c) of the Petition.

(b) The result of the election was materially affected by reason of the offence of undue influence at the election having been committed by persons mentioned in paragraph 13 of the petition.

Undue influence is alleged to have been committed in diverse ways on various persons details whereof are given hereinafter.

Paragraph 13 of Petition No. 5 purports to give a summary of the events which are alleged to have formed the background in which the offences were said to have been committed. Put briefly they are as follows (1) After the demise of the late Dr. Zakir Hussain, the Prime Minister of India who was also an influential leader in the, Congress Party took the view that the respondent who was then the Vice-President of India should be adopted as the Congress candidate for the office which had fallen vacant. This was not acceptable to all her colleagues in the Congress Parliamentary Board (hereinafter referred to as the 'Board'-a body which had in the past selected the party's candidate for the office of the President. The controversy which thus arose could not be settled because of want of unanimity of opinion and the matter was left to be decided at the Bangalore Session of the All India Congress Committee (hereinafter referred to as the 'Committee') to be held in July 1969.

(2) No consensus being attained at the meeting of the Board held in Bangalore on July 12, 1969 the matter was decided by voting. The Prime Minister and Sri Fakhruddin Ali Ahmed voted for Sri Jagjivan Ram while Sri Morarji Desai, Sri Y. B. Chavan, Sri S. K. Patil and Sri Kamaraj voted in favour of Sri N. Sanjeeva Reddy.

(3) The decision of the Board greatly upset the Prime Minister and she then and there threatened the members of the Board that it would lead to serious consequences and that she should not have been over-ruled in that manner. (4) The official announcement of the selection of Sri Sanjeeva Reddy as Congress candidate for the office of the President of India was made on 13th July 1969 and on the same day the respondent who was then acting as the President of India called a Press conference at Rashtrapati Bhavan whereat he announced his candidature for the office of the President. He issued a statement condemning the selection of Sri Sanjeeva Reddy as based on partisan considerations and emphasised that a candidate for the highest office in the land should possess character, integrity patriotism, experience and a good record of service and sacrifice. According to the petitioner there was insinuation that the above requisite qualifications were lacking in Sri Sanjeeva Reddy.

(5) Being upset by the decision of the Board, the Prime Minister without any consultation with her colleagues in the Cabinet advised the Acting President of India that she would withdraw the Finance portfolio from Sri Morarji Desai. Her advise being accepted Sri Morarji Desai was relieved of his portfolio. She followed it up with the promulgation of the Bank Nationalisation Ordinance, a day before Parliament was to commence its session. This Ordinance was signed by the respondent acting as President.

(6) On the 22nd July 1969 the Prime Minister proposed Sri Sanjeeva Reddy as a candidate for the office of the President of India which was duly seconded by Sri Swaran Singh, a Cabinet Minister.

(7) The Prime Minister however expressed difficulty in issuing a written appeal in support of the candidature of Sri Sanjeeva Reddy.

(8) At a meeting of the Board held on August 6, 1969 there was a joint address by the Prime Minister and the Congress President, Sri Nijalingappa, in support of Sri Sanjeeva Reddy's candidature. At this meeting the Prime Minister stated that she stood by the decision of the party while on his part Sri Nijalingappa said that he had been in contact with leaders of various opposition parties, namely, the P.S.P., the S.S.P., the Jan Sangh, B K.D. and others and that the response in favour of Sri Sanjeeva Reddy had been encouraging.

(9) On August 9, an anonymous pamphlet in cyclostyled form and a printed pamphlet both without the name of the publisher or the printer were published by free distribution among the members of the electoral college for the Presidential election. In this the leaders of the party like Sri S. K. Patil, Sri Atulya Ghosh and others were castigated as self-seekers who had tried to become virtual dictators and Sri Sanjeeva Reddy who had been selected by these people was described as a corrupt and immoral person. The pamphlet charged Sri Sanjeeva Reddy not only with lack of probity but as having been guilty of gross misdemeanour towards members of the other sex on a number of occasions, culminating in the statement that if he were to become the President he would "turn Rashtrapati Bhavan into a harem, a centre of vice and immorality."

(10) Not satisfied with what the Prime Minister had said at the Congress Parliamentary meeting on August 6, Sri Nijalingappa requested her specifically on August 9 to, issue an appeal to the members of the party to vote and work for the success of the Congress candidate. The Prime Minister avoided doing this and merely said that people should abide by the decision of the Board.

(11) This was followed by certain correspondence by and between Sri Fakhruddin Ali Ahmed and Sri Jagjiwan Ram jointly on the one hand and Sri Nijalingappa on the other, as also by and between Sri Nijalingappa and the Prime Minister from August 11 to August 15. The correspondence showed an open cleavage between the members of the party and it became clear that the Prime Minister and her colleagues in the Cabinet and their supporters made the issue of the success at the election by defeating the group which opposed her at the meeting of the Board on July 12, as one of prestige and political survival of the Prime Minister. Against the above background the offence of undue influence was said to have been committed by the returned candidate and some persons named and unnamed and described as the workers and supporters of the respondent with his connivance by

voluntarily interfering and attempting to interfere with the free exercise of the electoral rights of the candidates and the electors in general and some of them named in particular.

(a)According to paragraph 13 (b) (ii) of the petition Sri S. Nijalingappa, Sri S. K. Patil, Sri K. Kamaraj, Sri Morarji Desai and Sri Y. B. Chavan, electors at the election were threatened by the Prime Minister on the 12th July at Bangalore with serious consequences with the object of unduly influencing them so as to make them change their decision to nominate Sri Sanjeeva Reddy as their candidate. The threat is alleged to have been repeated subsequently on a number of occasions. It was also said to be a direct attempt 'Lo dissuade Sri Sanjeeva Reddy from standing as a candidate.

(b)In paragraph 13 (b) (iii) of the petition it was stated that with the object of interfering with the free exercise of the electoral rights of Sri Sanjeeva Reddy, Sri Nijalingappa, Sri Kamaraj and others, electors at the election, supporters of the respondent viz., Sri Jagjiwan Ram, Sri Yunus Saleem, Sri Sashi Bhushan, Sri Krishna Kant, Sri Chanresekhar, Sri Jagat Narain, Sri Mohan Dharia and Sri S. M. Banerjee in particular and other supporters and workers of the respondent in general, with the consent and connivance of the respondent published by free distribution a pamphlet, annexure A-38 to the petition, in Hindi and English, in cyclostyled form as well as in printed form in which serious allegations, as already noted, were made amounting to the commission of undue influence upon the persons named within the meaning of s. 171-C I.P.C.

(c)According to paragraph 13(b)(iv) of the petition this pamphlet was distributed from 9th to 16th August among all the electors of the electoral college for the Presidential election. It was distributed in the Central hall of Parliament by the above-

named persons i.e. Sri Jagjiwan Ram and others. A large numbers of electors were asked to read the contents of the pamphlet, and were also asked to say whether they would vote for such a debaucher and corrupt man. An instance of this is given in paragraph 13 (b) (iv) of the petition : Sri Yunus Saleem approaching Abdul Gani Dar, one of the petitioners and talking to him as above in the presence of other members of Parliament.

(d)The petitioner, Sri Abdul Ghani Dar, took strong excep- tion to what was going on and wrote a letter to the respondent endorsing a copy thereof to the Prime Minister and Sri Humayun Kabir requesting the respondent to condemn those who had published the pamphlet and make a public statement dissociating himself from and denouncing the publishers of the pamphlet.

(e)The respondent himself during his tour of the country addressed pressmen and members of the public at various places and repeatedly stated that a man of character and integrity should have been selected.

(f)According to paragraph 13 (c) (i) the supporters of the respondent, namely, the Prime Minister and some of her Cabinet colleagues like Sri Jagjiwan Ram, Sri Fakhrudin All Ahmed, Sri Yunus Saleem, Dr. Karan Singh, Sri Dinesh Singh, Sri Swaran Singh, Sri I. K. Gujral, Sri S. S. Sinha, Sri K. K. Shah and Sri Triguna Sen misused their position for furthering the prospects of the returned candidate by contacting a large number of electors on the telephone and openly telling them that if

the electors did not vote for the respondent they would lose all the patronage which they would otherwise be given. Electors were called by some of the abovenamed Ministers at their official residences and offices in Delhi and undue influence brought to bear upon them by ordering them to vote for the returned candidate.

(g)According to paragraph 13 (c) (iii) of the petition Sri Fakhrudin Ali Ahmed and Sri Yunus Saleem threatened the Muslim electors that Sri Sanjeeva Reddy was in fact a candidate of the Jan Sangh Party and if he was elected the fate of the Muslim community in India would be in danger. This undue influence was exercised over all the Muslim electors in the country and specially those in Parliament. An instance of this is given as having taken place between Sri Yunus Saleem and Sri Abdul Ghani Dar.

(h)The workers and supporters of the respondent became desperate and demanded freedom of vote at the election so that the members of the Congress party may not feel themselves bound by their party affiliation to vote for Sri Sanjeeva Reddy. It was stated that such a scare was created that the President of the U.P. Congress Committee, Sri Kamlapati Tripathi and the Chief Minister Sri C. B. Gupta who had on August 6, 1969 addressed a meeting for solidly backing Sri Sanjeeva Reddy changed their stand and on the 13th August, 1969 Sri Kamlapati Tripathi also pleaded for freedom of vote. (1) According to paragraph 13 (c) (v) a scare was raised and undue influence exercised on the minds of the members of the, Legislative Assembly of Bengal that if successful Sri Sanjeeva Reddy would enforce President's Rule in Bengal wiping off the United Front Government and the legislative assembly. According to paragraph 13(c)(vii) a similar scare was raised with regard to enforcement of President's Rule in Andhra Pradesh. According to paragraph 13(c)(x) the returned candidate, the Prime Minister, Sri Jagjiwan Ram, Sri Fakhrudin Ali Ahmed and others entered into a conspiracy calculated to maintain the said Ministers in their office by the allegation that Sri Nijalingappa had entered into an arrangement with the leaders of the Jan Sangh and Swatantra Party to oust the Congress Government from the Centre and to establish a Coalition Government.

There are other allegations of undue influence in the said paragraph but as they were not pressed no further notice need be taken of them.

In paragraph 14 of the petition it was stated that the result of the election had been materially affected by reason of the commission of the offence of undue influence at the election by the persons mentioned in paragraph 13 of the petition.

In paragraph 16 of the petition it was stated that in. case the Court came to the conclusion that the offences mentioned above, though committed were not connived at by the respondent, still the election ought to be declared void as the result of it had been materially affected by the above practices.

In the counter affidavit filed by the respondent the above charges were all denied and the correctness of the statements disputed. The respondent stated expressly that for want of knowledge he could not traverse the allegations in the various subparagraphs of paragraph 13 of the petition except those which were made against him or imputed to him and alleged to have been said or done

at his instance or with his connivance. He stated categorically in paragraph 25 of the counter affidavit that he had been carrying on his campaign single handed and that in between July 30 and 13th August he was out of Delhi most of the time touring different parts of the country. He disputed the correctness of the charges made in the various sub-paragraphs of paragraph 13 and denied that he had been contacted by the Prime Minister at Delhi from Bangalore as alleged or that she had suggested that as soon as an official announcement regarding the selection of Sri Sanjeeva Reddy was made he should announce his own candidature for the office of the President. With regard to his press conference he said that he had only outlined the necessary qualifications for the office of the President and that his statement could by no means be read as an attack on the personal conduct or character of Sri Sanjeev Reddy. He said further that he had approved of the taking over of the portfolio of Finance from Sri Morarji Desai on the 16th July on the recommendation of the Prime Minister but the signing of the Bank Nationalisation Ordinance had nothing to do with the Presidential election. He stated in clear terms that he had no knowledge of any of the statements relating to printing, publishing and distribution of the unsigned pamphlet, whether printed or otherwise and he completely dissociated himself therefrom. He denied the insinuation that he had anything to do with the Prime Minister's alleged call for a free vote to get support for himself. He characterised the allegations regarding the publication and distribution of the pamphlet mentioned in the petition by anybody as his supporters or workers with his consent and connivance, as reckless, wild and false. He denied having received any letter from Sri Abdul Ghani Dar as mentioned in the petition or any copy of the pamphlet. He denied ever having hinted in any of his public addresses anything derogatory to the personal conduct or character of Sri Sanjeeva Reddy. With regard to paragraph 13(c)(i) of the petition he stated that he was not aware of any of the persons having acted in the manner alleged therein. With regard to paragraph 13(c)(ii) and (iii) as also 13(c)(x) he disclaimed all knowledge.

On 21st January 1970 the Court directed the petitioners to furnish several particulars of the petition mostly relating to paragraph 13(b)(iii), 13(b)(iv), 13(c)(i) and 13 (c)

(iii). In compliance with the same the petitioners gave inter alia the following particulars.

With regard to paragraph 13 (b) (iv) they stated "that the persons who had distributed the pamphlet between the 9th and 16th August 1969 were already mentioned in paragraph 13(b)-

(iii) and some other persons who had done so were being mentioned in particulars furnished to paragraph 13 (b)

(iii), namely, Sri Maulana Ishaq Sambli, Sri Akbar Ali, M.P., Sri Bhupesh Gupta M.P. and Sri Randhir Singh M.P. With regard to the place and date on which the persons mentioned in paragraph 13(b)(iii) were alleged to have distributed the pamphlet it was said that on 9th August 1969 Sri Sashi Bhushan M.P. and Sri Krishan Kant M.P. had together distributed copies of the said pamphlet to various members of Parliament at the latter's residence in New Delhi. It was also said that the pamphlet had been distributed by leaving the same at the residence of nine other electors at their residence on 9th August late in the evening. Little attempt was made to prove these statements. The names of 18 persons were given as having received the said pamphlet at their residence by post in

various places in India. They were all members of the Legislative Assemblies of Uttar Pradesh as also of Madhya Pradesh, Bihar and Chandigarh. Of these some but not all were examined in court.

Further, with regard to distribution of the pamphlet it was said that the persons already mentioned in paragraph 13 (b)

(iii) as also those mentioned in reply to the application for particulars given above distributed the same individually and in groups of two or more on all days between 11th and 15th August to the general body of electors frequenting the Central hall of Parliament. The names of 29 members of Parliament were given as the recipients of the pamphlets in the above manner. Further groups of M.Ps. were mentioned as having distributed the said pamphlets to some or other of the petitioners on the 11th August 1969 in the Central hall of Parliament. With regard to the telephone calls by Ministers exercising undue influence over the members of the electoral college referred to in paragraph 13

(c) (i) about 30 M.Ps. were named as having been so contacted by 11 named Ministers including the Prime Minister, Sri Fakhruddin Ali Ahmed, Sri Jagjivan Ram, Sri Yunus Saleem and Sri I. K. Gujral. With the exception of three of them, namely, Sri Fakhruddin Ali Ahmed, Sri Yunus Saleem and I K Gujral, no attempt was made to substantiate the above. I do not think it necessary to dilate more on the correctness of the particulars and the attempt to establish the same except to say that. little effort was made to establish the allegations which were verified either as true to the knowledge of the deponent, Sri Abdul Ghani Dar or as being based on information received by him from the persons named, some of whom were called as witnesses but did not support the version of Sri Abdul Ghani Dar as given in the particulars.

For the sake of convenience issue No. 4 is reproduced below Issue 4 in Election Petitions Nos. 4 and 5.

(a) Whether all or any of the allegations made in paragraphs 8(e) and 13(a) to (in) of the petitions constitute in law an offence of undue influence under s. 18(1)(a) of the Presidential and Vice-Presidential Elections Act of 1952 ?

(b) Whether the said allegations made in paragraphs 8 (e) and 13 (a) to (m) are true and proved?

(c) In the event of these allegations being proved constituting undue influence, whether

(i) the returned candidate has committed the offence of undue influence ?

(ii) Whether undue influence was, committed by his workers and if so, with his connivance ? and

(iii) Whether undue influence was committed by others without his connivance and if so, whether that has materially affected the result of the election ?

Before going into the evidence adduced one must note the provisions of the law relating to the election of the President of India and in particular the grounds on which such an election can be challenged and then briefly consider the history of the law of undue influence generally and examine the statutory provisions of the law of undue influence applicable to elections and the exposition thereof in India.

Art. 71 (1) of our Constitution provides that all doubts and disputes arising out of or in connection with the election of a President or Vice-President shall be enquired into and decided by the Supreme Court whose decision shall be final. Sub-cl. (3) of that article lays down that :

"Subject to the provisions of this Constitution, Parliament may by law regulate, the matter relating to or connected with the election of a President or Vice-President."

By Act 31 of 1952, the Presidential and Vice- Presidential Elections Act (hereinafter referred to as the 'Act') Parliament made provisions for the conduct of Presidential and Vice-Presidential elections. Disputes regarding elections are dealt with in Part III of the Act containing sections 13 to 20. S. 16 of the Act lays down the reliefs which may be claimed by a petitioner and s. 18 specifies the grounds for declaring the election of a returned candidate to be void. The relevant part thereof reads as follows "18 (1) If the Supreme Court is of opinion-

(a)that the offence of bribery or undue influence at the election has been committed by the returned candidate or by any person with the connivance of the returned candidate; or

(b)that the result of the election has been materially affected-

(i)by reason that the offence of bribery or undue influence at the election has been committed by any person who is neither the returned candidate nor a person acting with his connivance;

(c) The Supreme Court shall declare the election of the returned candidate to be void.

(2)For the purposes of this section, the offences of bribery and undue influence at an election have the same meaning as in Chapter IX-A of the Indian Penal Code (Act 45 of 1860)."

Section 21 contained in part IV provides for the making of rules to give effect to the Act. The provisions in the Constitution and the Presidential and Vice-Presidential Elections Act of 1952 and the Rules framed thereunder form a complete code relating to such elections and all doubts and disputes regarding the validity of such elections which can be adjudicated upon by the Supreme Court must arise within the limits specified thereby.

Chapter IX-A of the Indian Penal Code which deals with offences relating to elections was introduced by the Indian Elections Offences and Inquiries Act, 39 of 1920, section 2. S. 171-A in that part defines candidates and electoral right. Bribery is defined in s. 171 B. Undue influence at elections is covered by s. 177-C which runs as follows "(1) Whoever voluntarily interferes or attempts to interfere with the free exercise of any electoral right commits the offence of undue influence at an

election.

(2) Without prejudice to the generality of the provisions of sub-section (1), whoever-

(a) threatens any candidate or voter, or any person in whom a candidate or voter is interested, with injury of any kind, or

(b) induces or attempts to induce a candidate or voter to believe that he or any person in whom he is interested will become or will be rendered an object of Divine displeasure or of spiritual censure, shall be deemed to interfere with the free exercise of the electoral right of such candidate or voter, within the meaning of sub-

section (1)

(3) A declaration of public policy or a

promise of public action, or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this section."

Under s. 171-F whoever commits the offence of undue influence or personation at an election shall be punished with imprisonment of either description which may extend to one year or with fine or with both. Under s. 171 G :

"Whoever with intent to affect the result of an election makes or publishes any statement purporting to be a statement of fact which is false and which he either knows or believes to be false and does not believe to be true, in relation to the personal character or conduct, of any candidate shall be punished with fine."

It will be noted that the words used in sub-s. (1) of s. 171-C are very wide and sub-s. (2) though illustrative of sub-s. (1) does not purport to comprehend all the facets of undue influence under sub-s. (1). The statement of objects and reasons of the Act of 1920 make the intention of the legislature clear. It reads :

"The second sub-clause is merely explanatory of the general definitions in the first sub-clause and does not restrict the generality of the words used there. We have considered the criticisms of this clause based on the generality of the words employed but we are satisfied that any attempt at specific enumeration would be open to serious danger of loopholes in what we regard as a most salutary provision."

On the facts of this case the vital question before us is, whether the mere publication of a false statement highly derogatory of the personal conduct or character of a candidate or the dissemination of a scurrilous pamphlet depicting a candidate as one of lecherous character will fall under sub-s. (1) of s. 171-C or whether in order to prove the commission of the offence the election petitioner must go further and establish that there was an attempt on the part of some persons to interfere with the free choice of a candidate on the part of the voters by making use of the pamphlet

so as to deflect their will and restrict their choice to persons other than the one defamed. Undue influence is an old and well known English legal concept. Before the expression came to be used in litigation over elections it had acquired a definite significance to English lawyers although its exposition in common law was somewhat different from that which the equity lawyers gave it. The concept was developed along a particular line by Judges in England trying election disputes and our Indian law has by and large followed the same pattern. According to Anson on English law of Contract (22nd Edition) Chapter VII :

"A contract which has been obtained by means of pressure or intimidation is voidable at common law or in equity on the ground of duress. At common law the definition of duress is a narrow one, and only the more extreme forms of coercion will suffice. In equity, however, owing to the development of the doctrine of constructive fraud, a contract may be rescinded in cases where common law provides no remedy..... At common law duress consists in actual or threatened violence or imprisonment; the subject of it must be the contracting party himself, or his wife, parent, child, or other near relative; and at it must be inflicted or threatened to be inflicted by the other party to the contract, or at least it must be known to him when he entered into the contract." (see p. 243). The learned author goes on to say at pages 244 and 245 "Equity, on the other hand, will treat contracts as voidable when they have been induced by forms of pressure or coercion which do not amount to duress at common law..... The term 'undue influence' has sometimes been used by the Courts to describe the equitable doctrine of coercion which has just been referred to, but it also includes, and it would perhaps be convenient to confine it, forms of pressure much less direct or substantial than those already discussed. It may arise where the parties stand to one another in a relation of confidence which puts one of them in a position to exercise over the other an influence which may be perfectly natural and proper in itself, but is capable of being unfairly used. * If it can be shown that one party exercised such domination over the mind and will of the other that his independence of decision was substantially undermined, the party whose will was overborne will be entitled to relief on the ground of undue influence.

There is no need for any special relationship to exist between the parties, although, of course, it may do so. The mere fact that domination was exercised is sufficient; no abuse of confidence need be proved."

According to Cheshire and Fifoot on the Law of Contract (7th Edition) p. 264 "The Courts have never attempted to define undue influence with precision, but it has been described as "some unfair and improper conduct, some coercion from outside, some overreaching, some form of cheating, and generally, though not always, some personal advantage obtained by" the guilty party." So far as the English Law of Elections on which principally our election laws are based-is concerned, reference may be made to some of the well-known text books on the subject. According to Rogers Parliamentary Elections and Petitions, 20th Edn. Chapter XI p. 325 :

"In England corruptly influencing a voter, whether by the more direct and grosser form of treating or the more indirect add subtler form of wagers was always an offence as a species of bribery; but unduly influencing a voter was not, before the 17 and 18 Vict. c. 102, an offence in the strict sense of the word, although its prevalence is mentioned in many resolutions of the House of Commons, and many statutes have been passed to prohibit the evil in particular instances; and although a vote unduly influenced is void at common law, and will be struck off on a scrutiny."

The learned author goes on to add "As early as 3 Edw. 1, c.5, which is declaratory of the common law, thus, in affirming the vital principles of freedom of election, said, "Because election ought to be free, the King commanded, upon forfeiture, that no man by force of arms, nor by malice or menacing, shall disturb any to make free election."

Rogers notes that in the case of Lichfield (1869) 1 O'M & H. 25, Willes, J. defined undue influence as "using any violence or threatening any damage, or resorting to any fraudulent contrivance to restrain the liberty of a voter, so as either to compel or frighten him into voting or abstaining from voting otherwise than he freely wills."

In the same case the learned Judge added (at p. 28) "The law cannot strike at the existence of influence. The law can no more take away from a man, who has property, or who can give employment, the insensible but powerful influence he has over those who he can benefit by the proper use of his wealth, than the law could take away his honesty, his good feeling, his courage, his good looks, or any other qualities which give a man influence over his fellows- It is the abuse of influence with which alone the law can deal. Influence cannot be said to be abused because it exists and operates. It is only abused in cases of this kind, where an inducement is held out by a promise..... to induce voters to vote or not to vote at an election."

This case was decided upon 17 and 18 Vict.

c.102, section 5.

According to Rogers the following are the principal kinds of improper influence :

1. The use of open force or violence, or the threat thereof.
2. The infliction of any temporal injury, damage, harm or loss or by the threat thereof.
3. The infliction of any spiritual injury, damage, harm or loss, or by the threat thereof.
4. The impeding etc. the due exercise of the franchise etc. by abduction, duress, or any fraudulent device or contrivance.

Section 101 of the Representation of the People Act, 1949, appears to be that latest codification of the English law on the subject of undue influence. Under sub-s. (1) a person shall be guilty of corrupt practice if he is guilty of undue influence. Sub-s. of the section is in two parts. Under cl. (b) a person shall be guilty of undue influence if, by abduction, duress or any fraudulent device or contrivance, he impedes or prevents the free exercise of the franchise of an elector or proxy for an elector, or thereby compels, induces or prevails upon an elector or proxy for an elector either to vote or to refrain from voting.

Under s. 91 (1) of the Representation of the People Act, 1949 "Any person who, or any director of any body or association corporate which, before or during an 'election, shall, for the purpose of affecting the return of any candidate at the election, make or publish any false statement of fact in relation to the personal character or conduct of the candidate shall be guilty of an illegal practice, unless he can show that he had reasonable grounds for believing, and did believe, the statement to be true 11--L308Sup. CI/71 It will thus be noticed that in England the law of undue influence as regards elections is somewhat akin to that branch of the law as expounded by the courts of equity and both have a common facet, namely, the inducement of a person to act otherwise than under his free will by resort to any fraudulent device or contrivance. Coining now to our Indian law, s. 16 of the Contract Act which came on the statute book in 1872 laid down by sub- s.(1) that "A contract is said to be, induced by "undue influence"

where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other."

In substance our law of contract with regard to undue influence stresses upon the domination of the will by another to obtain an unfair advantage by the exercise thereof. So far as our election law is concerned the earliest attempt seems to have been the codification in 1919 under Chapter IX-A of the Indian Panel Code. This was followed by the Government of India (Provincial Elections) Corrupt Practices and Election Petitions Order 1936 which will be shortly described as the Corrupt Practices Order. This law was passed after the Government of India Act of 1935. Corrupt practice in relation to an election by the members of a Provincial Legislature to fill seats in Provincial Legislative Council, meant one of the practices specified in Parts I and II of the First Schedule to the Order, and in relation to any other election, meant one of the practices specified in Parts I, II and III of that Schedule. Part I of the First Schedule defined undue influence in clause 2 in the following terms :-

"Undue influence, that is to say, any direct or indirect interference or attempt to interfere on the part of a candidate or his agent, or of any other person with the connivance of the candidate or his agent, with the free exercise of any electoral right
Provided that-

(a) without prejudice to the generality of the provisions of this paragraph, any such person as is referred to therein who-

(i) threatens any candidate or elector, or any person in whom a candidate or elector is interested, with any injury of any kind; or

(ii) induces or attempts to induce a candidate or an elector to believe that he, or any person in whom he is interested, will become or will be rendered an object of divine displeasure or spiritual censure, shall be deemed to interfere with the free exercise of the electoral right of that candidate or elector within the meaning of this paragraph

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

It will be noticed that there is a good deal of similarity between this provision and that in S. 171-C of the Indian Penal Code. There is greater similarity between undue influence as defined in S. 171-C and the definition of that expression in s. 123 of the Representation of the People Act, 1951-another Parliamentary Act. Under the Act of 1951 undue influence is defined as follows, in s. 123 (2) "Undue influence, that is to say, any direct or indirect interference or attempt to interference on the part of the candidate or his agent, or of any other person with the consent of the candidate or his election agent with the free exercise of any electoral right Provided that-

(a) Without prejudice to the generality of the provisions of this clause any such person as is referred to therein who-

(i) threatens any candidate or an elector or any person in whom a candidate or an elector is interested, with injury of any kind including social ostracism and ex-

communication or expulsion from any caste or community; or

(ii) induces or attempts to induce a candidate or an elector to believe that he, or any person in whom he is interested, will become or will be rendered an object of divine displeasure or spiritual censure, shall be deemed to interfere with the free exercise of the electoral right of such candidate or elector within the meaning of this clause :

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

This Act contains a further provision in cl.(4) of s. 123 laying down that "the publication by a candidate or his agent or by any other person with the consent of a candidate or his election agent 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 conduct or character of any candidate in relation to the candidature or withdrawal, of any candidate being a statement reasonably calculated to'- prejudice the election of that candidate at an election"

will be deemed to be a corrupt practice for the purpose of that Act.

It will be noted that under sub-s. (4) publication of a false statement relating to the personal conduct or character of a candidate only becomes a corrupt practice when it is done by a rival or his agent or any other person with his consent. However opprobrious such publication may be it is not an electoral offence under the Act of 1951 and would not be a ground for setting aside an election although it might become culpable under S. 499 of the Indian Penal Code and as such punishable with simple imprisonment for a term which may extend to two years or with fine or with both. Clearly such publication per se would not amount to any direct or indirect interference or attempt to interference with the free exercise of an electoral right so as to attract s. 123(2) of the Act. Even in England it would be an illegal practice within the meaning of s. 91 (1) of the Representation of the People Act. By itself it would not make the publisher of the statement guilty of undue influence. While enacting the statute of 1952 the legislature had before it the electoral offences codified in Chapter IX-A of the Indian Penal Code. It recognised the necessity of a law prescribing for the annulment of an election only if bribery or undue influence was committed thereat. Such offence if committed by a candidate or by any person with his connivance was enough- for declaring the election void. But if committed by any person who was not the returned candidate nor one acting with his connivance, it was not to affect the election unless the result of it had been materially affected by such malpractice. So far as this branch of the law is concerned the only difference between the Act of 1951 and the Act of 1952 lies in the fact that under the latter Act corrupt practices of bribery or undue influence by one who was not, a party to the election or his agent are also brought in. But the nature and character of undue influence under both the Acts remains the same. I see no reason for taking a view that what would not be undue influence under the Act of 1951 can become one under the Act of 1952.

If publication of defamatory matter relating to a candidate was to be treated as a direct or indirect interference or attempt to interfere with the free exercise of any electoral right under the wide words of S. 171-C (1) there would have been no occasion for the legislature to provide for it separately under S. 123 (4) of the Act of 1951. In my view the same position, would obtain under the Act of 1952 and before any publication of a defamatory matter relating to a candidate can be treated as commission of the offence of undue influence there must be some overt act in addition to the mere publication-some attempt or persuasion of, a voter to restrain the free, choice of a candidate before the law of undue influence is excited.

The above proposition may be illustrated as follows If anonymous posters containing defamatory matter about a candidate's personal conduct or character were to be displayed in prominent places in the constituency so as to attract the notice of electors, it would come within the mischief of S. 171-G of the Indian Penal Code but would fall short of exercise of undue influence under s. 171-C. An attempt to denigrate a person in such a way could not be said to be directed to thwarting the free

choice of electors inasmuch as the poster by itself would give no indication as to the source of information on which the, imputations were made or of their authenticity. But if an unsigned pamphlet containing matter defamatory of the personal conduct or character of a candidate be pressed personally upon an elector by another with an attempt to make the receiver believe that there was some basis for the charges levelled against the candidate, the person receiving the pamphlet would be likely to give credence to the imputations made therein and would thus be subject to a restraint on his franchise. As. a mere attempt to interfere with the free exercise of an electoral right is sufficient for the, purpose of S. 171-C(1) of the Indian Penal Code it is not necessary to prove positively that there was actual domination of or overbearing of the will of the elector to lead to the inference that undue influence was exercised :

it would be sufficient to Show that was an attempt to pervert the unfettered choice of a voter by resort to illegitimate persuasion inter alia by pressing upon him a document containing such a false statement of fact relating to the conduct or character of a candidate as would make any right thinking man shrink from selecting him and; shown him in the process of selection of a candidate. In such a case it would not be difficult" to hold that there was 'in fact malice behind the publication and the adoption of a fraudulent device calculated to defeat or deflect the will of the elector. In this view of the matter the publication of a false statement of fact relating to the conduct or character of a person coupled with an attempt to persuade electors by such publication would attract the operation of s. 171C(1) of the Indian Penal Code. It would also fall within the definition of undue influence in S. 123 (2) of the R.P. Act of 1951 and the definition given in cl. 2 of the Corrupt Practices Order, 1936.

I may now proceed to note some of the reports of Election Commissions under the Corrupt Practices Order 1936 before examining mere recent decisions. In Amritsar City (Mohamma- dan) Constituency Sh. Mohammad Sadiq v. Dr. Saifuddin Kitchlow(1) before the Second Election Petitions Commission Bench the scope of undue influence under the first Schedule to the Corrupt Practices Order, 1936 came to be considered.

It was the case of the petitioner that one Feroze-u-Din Ahmed by administering oaths to his audience which included numerous voters, restricted their choice to the returned candidate Dr. Kitchlew, under pain of spiritual penalties and thereby interfered with the free exercise of their right to vote. Counsel for the respondent argued that the element of compulsion was an essential ingredient of the corrupt practice of undue influence and contended that it was not even alleged that Feroze-ud-Din Ahmed had compelled his audience to take the alleged oaths. The Commissioners found that " such oaths were taken and that Feroze-ud-Din Ahmad also reminded his audiences of the penalties provided for breach of such oaths by their religion. It is evident that the element of compulsion was present in the minds of those voters who had taken oaths to vote for Dr. Kitchlew at the time when they marked their ballot-papers; they had given an undertaking, supported by the sanction of loss of faith, which inevitably leads to divine displeasure and spiritual censure, that they would vote for Dr. Kitchlew and for no other person."

The Commissioners however could not find in the definition of 'undue influence' any basis for the proposition that unless Ferozeud-Din Ahmad had compelled voters to take these oaths, the offence of undue influence was not complete observing :

"That definition, as is obvious, gives a very wide scope of the meaning of "undue influence..... Evidently the offence includes such interference or attempt to interfere by any method, and one possible method is the method of inducement, which is proved to have been practised in this case. In fact the word 'induces' occurs in the second proviso to the definition of "undue influence' reproduced above. Further, we have seen that the inducement was of a very powerful type, supported as it was by references to the demolition of the Shahidganj Mosque, and the deaths of Muslims which resulted from the firing during the ensuing disturbances in regard to which the feeling among the rank and file of the Muslim community is undoubtedly very deep. "

(1) Doabia's Election Cases, Vol. It, page 117.

In Amritsar City (Mohammadan) Constituency Case No. 2(1) the meaning of undue influence under the Corrupt Practices, Order, 1936 again fell to be considered. There a question arose as to whether certain news items and posters in which the unsuccessful person was wrongly and falsely described as standing as a candidate on a Muslim League ticket would fall within the mischief of the Order. In their report the Commissioners stated (at p. 157) :

"There is no proper evidence of actual interference before us, and as regards the attempt, we have to see if there was the deliberate intent to mislead voters and thus make them exercise their electoral right under the wrong impression that the respondent had been set up as a candidate by the Muslim League."

The case for the petitioner there was that one Maulana Zaffar Ali Khan by making an appeal to the voters restricted their choice to, Mohammad Sadiq under pain of spiritual penalties and even otherwise and thereby exercised undue influence in the free exercise of their right to vote. In the opinion of the Commissioners an inducement could not amount to undue influence unless it was of such a powerful type as would leave no free will to the voter in the exercise of his choice. In Lylapur and Jhang General Constituency Case No. 2 (2) one of the questions canvassed was whether fraud was a corrupt practice within the meaning of Government of India (Provincial Legislative Assemblies) Order 1936, paragraph 4-B. According to the Commissioners fraud may in some cases come within the ambit of the corrupt practice of undue influence.

Referring to the definition of undue influence in the said order the Commissioners observed :

"It is obvious that the definition of undue influence is very widely worded and covers all kinds of fraudulent acts or omissions which, in any way directly or indirectly interfere with the exercise of any electoral right. The definition in the English Act specifically makes a fraudulent device or contrivance a type of undue influence. As

devices based on fraud which interfere with the exercise of electoral right, are not mentioned by name in the definition given in Schedule 1, it has been intentionally framed in very general terms so as to cover all kinds of such devices."

(1) The Indian Election Cases by Doabia, Vol. 2 page 150 dated 28th September, 1938.

(2) Doabia's Election Cases, Vol. II p. 243 at 256.

Jujhar Singh v. Bhairon Lall & others⁽¹⁾ was a case in which there were two candidates, one a jagirdar and the other a Congressman. The Congress committee published a poster containing the picture of a tenant tied up to a tree and a well dressed jagirdar asking another who had a waving whip in his hand, to flog the tenant and the tenant's wife was shown lying prostrate on the ground. It was held that the publication of the poster amounted to the exercise of undue influence on the voters who were mostly illiterate villagers and the case fell under S. 123(2) of the Representation of the People Act.

In R. K. Shukla v. T. C. Maheshwar⁽²⁾ one of the questions before the Election Tribunal was whether the shouting of a slogan in various villages and bazars that people who vote in a particular way would be given a shoe-beating amounted to exercise of undue influence. Relying on the observations of Norfolk (Northern case (1 O'M & H. 236 at 242)) that before a threat can be considered to amount to undue influence, a question must be put, 'was it a serious and deliberate threat uttered with the intention of carrying it into effect?' Applying that test, the Election Commissioners held that they had no difficulty in coming to the conclusion that the shouting of the slogan could not amount to undue influence inasmuch as it was shouted for several months before the election was held and not a single instance was brought on record in which the threat contained in the slogan was carried out. On the facts of the case, it was held that none of the parties could be said to have uttered slogans for the purpose of directly or indirectly interfering with, any person's free exercise of his electoral right. Reference was also made to the fact that there was no evidence that any complaint even had been made about the shouting of the slogans to the agents of the petitioners. In Amir Chand v. Sucheta Kripalani⁽³⁾ one of the questions which engaged the attention of the Election Tribunal was whether a false statement in a daily newspaper to the effect that the respondent Smt. Sucheta Kripalani was going to be taken as a Rehabilitation Minister in the forthcoming Union Cabinet after the election thereby giving currency to the rumour amounted to undue influence as contemplated under s. 123 (2) of the Representation of the People Act. The view taken by the Tribunal was that (p. 252):

"The so-called device namely, that some one from Lucknow sent the news as a rumour or opinion of the member of the Congress High Command, does not fall within the ambit of the definition".

(1) 7 E.L.R. 457. (2) 12 E.L.R. 378 at 415. (3) 18 E.L.R. 209.

ins. 123(2). It was said that though the definition was no doubt in general terms it had an element of compulsion and it was an abuse of influence that would constitute undue influence.

In *Kataria Takandas Hemraj v. Pinto Frederick Michael*(1) an appeal was made to Maharashtra not to vote for the Congress Government had resorted to firing and killing Maharashtra leaders for demanding a separate Maharashtra State and photographs of martyrs who had been killed were attached to the appeal and it was even stated that the ballot box of the Congress Party was filled with the blood of Maharashtra martyrs. Negating the plea of undue influence sought to be raised in the above appeal, the Tribunal stated that although the expression 'undue influence' was wide, enough to cover any interference with the exercise of the electoral right, there is in it an element of compulsion so as to give way to free thinking in the exercise of the electoral right of the voters. In *Radhakrishna Misra v. Nityananda Mahapatra*(2) a case, of undue influence was sought to be made out inter alia by the publication of a booklet which had in its cover page a photograph of one S. who had been killed during the police firing with the caption "Do not vote for the Congress who had killed S." In the judgment in appeal from the Election Tribunal, Barman, J. remarked (at p. 217) "A voter must be able to freely exercise his electoral right. He must be a free agent."

All influences are not necessarily undue or unlawful. Legitimate exercise of influence by a political party or association or even an individual should not be confused with undue influence. Persuasion may be quite legitimate and may be fairly pressed on the voters. On the other hand, pressure of whatever character, whether acting on the fears, threat, etc. if so exercised as to overpower the volition without convincing the judgment is a species of restraint which interferes with the free exercise of electoral right. In such an atmosphere, the free play of the elector's judgment, discretion or wishes is overborne and this will constitute undue influence though no force is either used or threatened. It is not necessary to establish that actual violence had been used or even threatened. Methods of inducement which are so powerful as to leave no free will to the voter in the exercise of his choice, may amount to undue influence. Imaginary terror may have been created sufficient to deprive him of free agency."

(1) 18 E.L.R. 403.

(2) 19 E.L.R. 203.

With regard to the poster with the picture, the learned Judge said (at p. 219) :

"It was an artful device to catch the imagination of the voters. It terrorised the voters and was likely to create in their mind a feeling of terror, fear, hatred or strong prejudice against the Congress..... It at least did create or was likely to create or had the tendency to create terror and an unknown fear in the mind of the voters. The picture of the dead boy with the caption frightened the voters or was likely to frighten them and it was intended to overawe voters which interfered or was likely to interfere or had the tendency to interfere with the free exercise of electoral right of the 'Voters.'"

The learned Judge was in favour of allowing the appeal but his colleague, Rao, J.

expressed a different view. According to him (P. 234) :

"The picture simply represents Sunil De after being shot at by the police firing with the caption underneath 'Do not vote for the Congress who killed Sahid Sunil.' It does not say that if the voters give their votes for the Congress all the voters or some of them would be shot as Sunil De."

The matter was referred to Das, J. by the Chief Justice in view of the difference of opinion between Barman and Rao, JJ. According to this Judge no undue influence was exercised because nothing had been stated in the photo Ex. 3 relating to the picture and there was no statement that if the voters gave their votes to the Congress, they would be shot at as Sunil and accordingly "respondent No. 1 could not have intended to cause any fear in the minds of the voters by the above publication to constitute interference with the free exercise of the electoral right of the voters." In *Abdul Rahim v. Radha Krishna*(1) an unsuccessful candidate charged the returned candidate along with other persons with having committed undue influence by publication of a pamphlet in which it was alleged that deliberate false statements of fact in relation to his personal conduct and character had been made. In hearing the appeal Das, J. who delivered the judgment of the Court referred to the definition in S. 123(2) of the Representation of the People Act and said "There is nothing in the definition that such interference or attempt at interference should be by any method of compulsion. Evidently, the offence includes (1)A.I.R. 1959 Orissa p. 188.

such interference or attempt to interfere by any method, and it definitely includes the method of inducement wherein there may not be any compulsion at all. The inducement again must be of such powerful type as would leave no free will to the voter in the exercise of his electoral right."

On the evidence the learned Judge held (at p. 193) that there was admission by the respondent himself and it was abundantly clear that the returned candidate had acted conjointly with his, agent in publishing and circulating Ex. 5 as a result of which the election of the petitioner was materially affected. In *Ram Dial v. Sant Lal and others*(1) a question arose as to whether a command from Sri Sat Guru Sacha Padshah to the Namdharis Halqasirsa that every Namdhari should vote for the success of Ram; Dayal Vaid, it being a primary duty to make him successful in the election amounted to the exercise of undue influence. No doubt the command was from a person who was a religious leader and as such had a great influence on the Namdharis. The Court expressed the view that the religious leader has a right to exercise his influence in favour of any particular candidate by voting for him and by canvassing votes of others for him, and has the right freely to express his opinion on the comparative merits of the contesting candidate and to canvass for such of them as he considers worthy of confidence of the electors. Such a course of conduct on his part, would amount to an abuse of his great influence% if the words used in a document, or utterances in his speeches leave no choice to the person addressed by him in the exercise of his electoral right. Incidentally it may be noted that the learned Judges stressed what was material under the Indian law was not the actual effect produced but the doing of such acts as were calculated to interfere with the free exercise of an electoral right.

In *Inder Lal v. Lal Singh*(2) the charge against the returned candidate was that he had been guilty of the exercise of undue influence inasmuch as a pamphlet containing a false statement that the respondent No. 2 was "purchaser of the opponents of the Congress by means of money" was issued

by the agent of the respondent with his consent. Respondent No. 1 contended that the statement related to the public or political character of respondent No. 2 and not to his private character. In his judgment, Gajendragadkar, J. said (p. 122) :

"Circulation of false statements about the private or personal character of the candidate during the period proceeding elections is likely to work against the freedom of election itself inasmuch as the effect created by false (1) [1959] Suppl. 2 S.C.R. 748.

(2) [1962] Suppl. 3 S.C.R. 114.

statements cannot be met by denials in proper time and so the constituency has to be protected against the circulation of such false statements which are likely to affect the voting of the elector&"

With regard to the, allegation in the pamphlet already mentioned the Court took the view that "In plain terms, the statement amounts to an allegation that respondent No. 2 buys by offering bribes the votes of the opponents of the Congress Offering a bribe in an election introduces an element of moral turpitude and it cannot be denied that a person who offers bribe loses reputation as an individual in the eyes of the public."

The scope of s. 171-C I.P.C. was considered in the recent decision of Baburao v. Zakir Husain(1). This case is not an authority directly in point but some observations made by Wanchoo, C.J. may not be out of place.

Delivering the judgment of the Court his Lordship remarked (p. 145) that "..... the gist of undue influence at an election consists in voluntary interference or attempt at interference with the free exercise of any electoral right. Any voluntary action which interferes with or attempts to interfere with such free exercise of electoral right would amount to undue influence. But even though the definition in sub-s. (1) of s. 171- C is wide in terms it cannot take in mere, canvassing in favour of a candidate at an election. If that were so, it would be impossible to run democratic elections. Further sub-s. (2) of s. 171 C shows what the nature of undue influence is though of course it does not cut down the generality of the provisions contained in sub-section (1). Where any threat is held out to any' candidate or voter or any person in whom a candidate or voter is interested and the threat is of injury of any kind, that would amount to voluntary interference or attempt at interference with the free exercise of electoral right and would be undue influence. What is contained in sub-s. (2) of s. 171-C is merely illustrative. It is difficult to lay down in general terms where mere canvassing ends and interference or attempt at interference with the free exercise of any electoral right begins. This is a matter to be determined in each case (1) [1968] 2 S.C.R. 133.

The question which primarily engaged the attention of this Court in the above case was, whether a letter addressed by the Prime Minister to all the electors in which she commended Dr. Zakir Husain and requested the electors to vote for him amounted to the exercise of undue influence and on the facts of the case the answer was in the negative. The above citation of the cases is in our view

sufficient to reject the contention of Mr. Daphtari that in order to establish undue influence it must be shown that there was some threat to a voter or at least an element of compulsion in the appeal to him. The cases also show that it would be futile to attempt to lay down a simple test applicable to all sets of facts and circumstances where undue influence is alleged to have been exercised. It can however be said that an attempt on the part of anybody to deflect a voter's will away from a particular candidate by creating prejudice against or hatred for him, as for instance by casting false aspersions on his personal character and conduct whether by spoken words or in writing may be sufficient for the purpose of establishing the commission of undue influence. Much would however depend on the nature of the attempt, the position of the person making it and the manner in which it is made. The mere publication by postal despatch of an anonymous but scurrilous pamphlet regarding the personal character of a candidate to voters all and sundry might attract the operation of s. 171-G of the Indian Penal Code but would fall short of S. 171-C. But if such a pamphlet is pressed upon voters and methods of inducement applied to them, specially by others who are equally interested in the election different considerations may well arise. In such a case a court of law may legitimately hold that the disseminators of the pamphlet were attempting to canalise or force the will of others away from the person whose character was assailed. Few would take any serious notice of an anonymous pamphlet however scurrilous it may be, if it were pasted on the walls of houses within the constituency where the election is to be held. Similar would be the fate of such a pamphlet disseminated by post. Persons who receive such a pamphlet would either throw it away or express surprise that such aspersions were being made against a person like Sri Sanjeeva Reddy who has held high offices. I do not think that such dissemination, although mean and ignoble, would have any effect on the minds of persons who belong to the electoral college for the election of a person to the office of the President of India. But if the disseminators of such pamphlets were persons holding responsible offices or persons who belonged to the same category as the recipients and tried to induce the latter to take a particular line of action in a forthcoming election on a personal appeal based on such pamphlets, it would not be difficult to hold that their influence was being exercised unduly and corruptly and an offence committed

within the meaning of S. 171-C. Mere dissemination of such pamphlets even by hand of well-placed persons would not be enough for such purpose. The pamphlet in this case plumbs depths of filth and meanness seldom reached. It was not a mere attempt to dub Sri Sanjeeva Reddy as a man generally devoid of good principles. It accused him of conduct wholly unbefitting a gentleman not to speak of a person who aspired for election to the high office of the President of India and charged him with acts of misdemeanour towards members of the other sex giving instances and in most cases mentioning the occasions at which he is said to have committed the indecent acts imputed to him. It was calculated to engender strong prejudice in the minds of electors against Sri Sanjeeva Reddy both in his personal capacity and as being the nominee of a group of persons described as usurpers of power in the Congress Party. It is difficult to find suitable words to condemn the making and publication of such a vile pamphlet in an election to the highest office in the land and it is certainly a great pity that the authors thereof have not been tracked or suitably dealt with.

Having concluded that the use of scurrilous pamphlet of the type disclosed in this may be a step in the commission of undue influence within the meaning of S. 171-C of the Penal Code, I have to

consider the evidence adduced to find out the extent of its publication and the manner in which it was published and used before it can be held that undue influence was in fact brought to bear upon the minds of certain electors. One has next to ascertain whether the offence of undue influence was committed by the respondent or by any of his workers with his connivance. If neither of these be proved, we have to shift the evidence to see whether the offence was committed by others to an extent which materially affected the result of the election. Counsel for the parties argued at some length on the question as to the standard of proof required to establish the commission of the offence of undue influence. As the malpractice is an offence under the Indian Penal Code and attracts punishment by way of imprisonment, Mr. Daphtary argued that the standard of proof required is a much higher one than in ordinary civil cases. According to him the charge must be well and truly laid in the petition and its particulars and evidence adduced in proof thereof as would leave no scope for any reasonable doubt that the offence has been committed by the persons charged therewith. Mr. Daphtary laid great stress on the production of evidence strictly following the pleadings and contended that no deviation therefrom was permissible. The petitioners according to him could not be allowed to abandon or jettison the case raised in the pleadings and ask the court to hold on the evidence adduced that the offence of undue influence has been committed by some persons although the manner of commission as laid down in the pleadings was not borne out by the evidence. He also argued that as these persons were not parties to the proceedings they were under no compulsion to come and give evidence in court and the respondent owed no duty to call all or any of them to disprove the charges levelled against them. Mr. Daphtary's argument seemed to suggest that the petition and the particulars thereof supplied later were to be considered in the same light as the first information report in a criminal case and the court should weigh the evidence given at the hearing in the same way as in a criminal trial and if there was a significant departure in the evidence from the charges levelled in the petition, hold that the commission of the offence pleaded was not established.

Counsel for the petitioners argued that the paramount duty of the court in such cases was to uphold the validity of an election only if it was pure and although the court should be slow in upsetting the result of an election on mere trivialities or irregularities it should not hesitate to do so when the evidence disclosed commission of corrupt practice on a large scale merely because of the deviation of the evidence from the pleading. It was further suggested that although the charges savored of criminality they were not investigated as in a criminal case but the hearing of the election petition was more akin to that in a civil proceeding and the court should come to its conclusion on the issues framed and the evidence adduced not on the balance of probabilities but on the strength of the direct evidence adduced.

This question has engaged the attention of this Court on prior occasions and reference may be made to some of them to see the views expressed therein. In *Mohan Singh and others v. Bhanwarilal & others*(1) where charges of corrupt practice had been levelled it was said :

"The onus of establishing a corrupt practice is undoubtedly on the person who sets it up, and the onus is not discharged on proof of mere preponderance of probability, as in the trial of a civil suit; the corrupt practice must be established beyond reasonable doubt by evidence which is clear and unambiguous."

Much to the same effect was the decision of this Court in Jagdev Singh v. Pratap Singh (2).

(1) [1964] 5 S.C.R. 12. (2) A.I.R. 1965 S.C.

183. In Samant N. Balakrishna etc. v. George Fernandez and others etc.(1). it was said (see at p. 637) :

"Although the trial of an election petition is made in accordance with the Code of Civil Procedure. it has been laid down that a corrupt practice must be proved in the same way as a criminal charge is proved. In other words, the election petitioner must exclude every hypothesis except that of guilt on the part of the returned candidate or his election agent."

All the three cases mentioned above were tried under the Representation of the People Act, 1951 the relevant provisions of which are somewhat different from those in the Act of 1952. Under the 1951 Act an election can be declared to be void if, inter alia the High Court is of opinion that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of the returned candidate or his election agent. S. 123 of the Act of 1951 specifies what are the corrupt practices for the purposes of the Act. Section 99 of the Act of 1951 makes it incumbent upon the High Court when it declares the election of a returned candidate to be void on the basis of a charge made in the petition of any corrupt practice having been committed at the election, to record a finding whether any corrupt practice has or has not been proved to have been committed; but a person who is not a party to the petition is not to be named. by the High Court under this section unless he has been given notice to appear before the High Court and to show cause why he should not be so, named. Liberty is also given to him in case he appears in pursuance of the notice to cross-examine any witness who has already been examined by the High Court and calling evidence in his defence and of being heard. The Act of 1952 does not contain any similar provision. There can be no doubt that a charge of undue influence is in the nature of a criminal charge and must be proved by cogent and reliable evidence not on the mere ground of balance of probability but on reasonable certainty that the persons charged therewith have committed the offence on the strength of evidence which leaves no scope for doubt as to whether they had or had not done so. It must also be remembered that even if there be no provision in the Act of 1952 of giving notice to the persons who are charged with having committed undue influence or of impleading them as parties, it is the duty of the election petitioners to lead direct evidence on the point and the respondent cannot take shelter behind the plea that he owes no duty to call them or to disprove the allegations made against them if he is to have his election maintained (1) [1969] 3 S.C.R. 603.

by the Court. There is a special provision in the Act of 1952 which is absent from the Act of 1951 in that an election may be set aside on the ground of the commission of undue influence by persons who are not agents of the returned candidate and whose action has not been connived at by him if the court finds that the result of the election has been materially affected by the commission of undue influence by outsiders and complete strangers to the election. The analogy of the trial of an election petition with that of a criminal charge cannot be pushed too far. There are, inherent

differences between the two in the matter of investigation. The vital point of identity in the two trials is that the court must be able to come to a conclusion beyond any reasonable doubt as to the commission of a corrupt practice. The court looks for reliable independent evidence to establish charges of a criminal nature but unfortunately such evidence is found to be lacking in a great many cases. It is well-known that even in cases where persons are charged with murder, independent witnesses fight shy of the witness box and are not called to support the prosecution case; the Judge hearing such a case has to make up his mind on', the evidence of witnesses who are partisan in the sense that they are related to the victim and shift the same carefully to make up, his mind whether the charge is established. The same is the case, in the trial of most of the election petitions. Election petitioners nearly always examine persons who are their supporters, while the returned candidate follows the same course. This takes place in particular where charges of undue influence and bribery are levelled. However onerous the task of the court may be because of the partisan nature of the witnesses, it cannot reject the oral evidence adduced merely on that ground, but it has to examine, the same carefully and come to a conclusion whether the evidence establishes the corrupt practice beyond reasonable doubt. Even in a criminal trial the court can hold a person guilty of a crime on the strength of evidence of partisan witnesses if they are found to be reliable although there may be no independent corroboration, thereof and I see no reason to depart from that principle in the trial of an election petition where charges of offences culpable under the Indian Penal Code are levelled.

In this case no less than 116 witnesses were examined, 55 on the side of the petitioners and 61 on the side of the respondent. A good many of the witnesses are persons who have held or still hold high offices. Excluding a few nearly all of them are elected representatives of the people either to the Houses of Parliament or to the Legislative Assemblies of the States. They are men whose evidence in the ordinary course of things should carry great weight but unfortunately a good many of them are members of two hostile camps who came to court resolved to do their best for one side or the other. It is well-known that the old Congress Party is no longer united and that there has been a sharp cleavage among its members and before the hearing of the election petitions one group came to be known as Congress (O) and the other Congress (R). The cleavage is referred to in the petition itself. Persons who have figured as witnesses but do not belong to either of these parties generally but not universally have their affinity for one side or the other. It has also come out in evidence that the split in the Congress Party originated back in April 1969 when there was a meeting of the A.I.C.C. at Faridabad. The difference of opinion seemed to stem from opposite views held by some leading members about the steps to be taken for the economic progress of the country. It came out clearly in the evidence of Sri Shankar Dayal Sharma (a witness for the respondent) and a member of Madhya Pradesh Legislative Assembly who had been in public life for about 32 years. He became a member of the All India Congress Working Committee in January 1968 and was appointed General Secretary of the Indian National Congress in April 1968. He continued in that post till the 1st November 1969 when he submitted his resignation at the request of the then Congress President, Sri Nijalingappa. His evidence which was not challenged in cross-examination shows that at Faridabad session a new Procedure was adopted for splitting the A.I.C.C. into three panels. In the economic panel serious differences arose between the members specially between the Chairman, Sri Morarji Desai and some of its members and no report could be finalised. According to the witness there was a demand for nationalisation of banks by some members which was resisted by the Chairman and some others.. It

is not necessary to mention the various points of difference between the members of the panel but according to this witness the Prime Minister and Sri Morarji Desai held contrary views on this point.

According to Sri Nijalingappa who figured as a witness for the petitioners the question of selecting a person fit for the office of the President arose very soon after the demise of Dr. Zakir Husain early in May 1969. He claimed to have sounded the Prime Minister on more than one occasion in the months of May and June to fix upon a proper person for the office but nothing resulted. When they met at Bangalore in July 1969 the question cropped up again. The Prime Minister told him at the meeting of the 12th July that she had the respondent in her mind but she found no encouraging response to her proposal. Sri Nijalingappa then said that members might suggest other names whereupon the Prime Minister proposed the name of Sri Jagjivan Ram and Sri S. K. Patil suggested the name of Sri Sanjiva Reddy. As no agreement could be arrived at, the matter was put to vote and Sri S. K. Patil, Sri Morarji Desai, Sri Chavan and Sri Kamaraj Nadar were in favour of Sri Sanjeeva Reddy while the Prime Minister and Sri Fakhruddin Ali Ahmed supported Sri Jagjiwan Ram. Neither Sri Jagjiwan Ram nor Sri Nijalingappa expressed any opinion. According to Sri Nijalingappa, the Prime Minister expressed unhappiness over it and said that serious consequences may follow.

It is the case of the petitioners as brought out in the evidence that although the Prime Minister signed the nomination paper of Sri Sanjeeva Reddy within a few days thereafter she did not take any other step to ensure his success at the election. It also, in evidence-and is a matter of common knowledge-that immediately after the conclusion of the Bangalore Session the portfolio of Finance was withdrawn from Sri Morarji Desai and the Bank Nationalisation Ordinance was promulgated just before the meeting of Parliament in July 1969. The split in the party which had been dormant before came to limelight soon afterwards. Although the two conflicting groups came to be known as Congress (O) and Congress (R) some time thereafter there can be little doubt that the seed of dissemination was bearing fruit and mutual suspicion between the members of the two groups came to the surface. The Presidential election which was held on 16th August 1969 was in the offing but it seemed to have been made the venue for clash of ideologies and test of strength. According to Sri I. K. Gujral a witness for the respondent, the under current of difference between the parties since the Bangalore Session of the Congress came to the surface early in August 1969, the decisive factor being Smt. Tarkeshwari Sinha's article in the Search Light suggesting a move to throw out the Prime Minister. According to Sri Gujral many people were of the view that the Congress President Sri Nijalingappa had tried to make a deal with Sri Ranga of the Swatantra Party and Jan Sangh for a coalition Government and the election of Sri Sanjeeva Reddy as President was considered to be a step in that direction.

That there was a sharp difference of opinion and the arraying of members into two warring camps at or about that time admits of no doubt or dispute. Whoever be the authors or the printer,, of it, the distribution of the pamphlet started round about 9th or 10th August. From the 11th August correspondence started between Sri Jagjiwan Ram and Sri Fakhruddin Ali Ahmed on the one side and Sri Nijalingappa on the other, as well as between the Prime Minister and Sri Nijalingappa. As a matter of fact the correspondence between the Prime Minister and Sri Nijalingappa had started as early as 16th July. In the letter of that date (Ex. P-41) the Prime Minister complained that she was

deeply distressed by the, stories in the Press attributing all kinds of motives to her and said that newspaper speculation 'about her alleged reaction to the decision of the Parliamentary Board were wholly misconceived and inspired by interested elements. On August 11, 1969 Sri Jagjiwan Rain and Sri Fakhruddin Ali Ahmed wrote to Sri Nijalingappa "Considerable confusion exists in the minds of numerous members of our Parliamentary Board regarding the talks made on your own initiative with some of the leaders of the Jan Sangh and Swatantra Party and that it was claimed that as a direct result of your talks the Jan Sangh Executive has decided to support Sanjeeva Reddy."

The writers complained that the, members of the Congress Party were: considerably agitated over this and ugly rumours were afloat and the situation had worsened because those whom Sri Nijalingappa had approached and their representatives had openly demanded the removal of the Prime Minister. They ended the letter by saying :

"Unless the whole position was fully clarified and the basis of Sri Nijalingappa's talks and the readiness of the other parties to support Sri Sanjeeva Reddy were satisfactorily disclosed it might have great repercussions on the Presidential election."

To this Sri Nijalingappa replied on August 13th saying that although he' head met the writers the day before' the points raised in the letter had never been canvassed. Sri Nijalingappa further stated, that he had been approaching every party for its support and requesting every voter for his vote in favour of Sri Sanjeeva Reddy in accordance with past traditions. Correspondence went on in the same vein up to the 18th August even after the taking of the poll According to Sri Nijalingappa's letter to the Prime Minister dated the 15th August the members of the Parliamentary Board had agreed on the 1st August that he might contact all parties and voters to seek for their support and he had reported to the Congress Parliamentary Board meeting held on the 5th about his talks with the opposition parties. Further there never was any understanding with, Jan Sangh or the Swatantra Party beyond seeking their supporter the Presidential election and the demand for a free vote which had already been raised was in fact a claim of right to vote for the respondent, a candidate nominated by the Communist-, and Communalists.

No useful purpose will be served by referring to the said correspondence in detail and mention has been briefly made of the same only to bring out in sharp focus the difference between the two groups. Members of the two groups who have appeared as witnesses in this case had definitely taken side,; some days before the date of the poll. According to some witnesses examined on behalf of the respondent, the manner of selection of Sri Sanjeeva Reddy was against all past traditions of the Congress as no attempt at consensus was made before the matter was. put to vote. Some even felt that the Prime Minister should not have been over-borne in the way she was done on the 12th July. Whatever might be the individual reactions of the members of the two groups, there is no gain saying that there was a strong current of opposition to the election of Sri Sanjeeva Reddy as President of India and more than one witness for the respondent including Sri Yunus Saleem admitted that there was a campaign for getting signatures of members of Parliament on a document demanding the right to vote freely in the election. This in effect meant the right to vote against the party affiliation although it was termed a right to vote according to conscience.

I now proceed to consider the contents of the pamphlet I'll detail and then examine the evidence adduced to find out whether any and if so, what use was made of it by any one in a manner which could be said to amount to an attempt to interfere with the free exercise of any person's electoral right within the meaning of s. 171 C of the Indian Penal Code. It is also necessary to scrutinise the evidence to see whether the charge levelled by the petitioners that the pamphlet was the work of a group of People supporting the Prime Minister and secretly working for the success of the respondent is borne out.

Although the pamphlet on the face of it was anonymous, there are certain indications in it to show its probable origin. The document purports to be addressed to "fellow Congress Members of Parliament and the Vidhan Sabhas" by "Congress Workers Committee to combat the Syndicate" and bears the date 9th August. It starts off thus :

"Our great Party (obviously referring to, the Congress Party) which led the entire nation in the struggle against British rule and had the glory of bringing independence for our motherland, has today fallen into a slur of despondence and demoralisation. Into its leadership have crept in men whose record shows that they have sold their conscience to the rich and the corrupt, who are seeking to destroy all attempts of harnessing the Congress once again the service of the common people."

It then goes on to charge that "Self-seekers infiltrated into this great organisation. After Panditji's death it is a small coterie of unscrupulous persons who landed themselves into what is called the syndicate and have tried to become virtual dictators."

It ascribes the heavy defeat suffered by the Congress Party in the general election of 1967 to the management of its affairs by evil men. The reference seems to be to Sri S. K. Patil, Sri Atulya Ghosh and Sri Kamaraj. It then proceeds to state (a) that at the then recent Bangalore session of All India Congress Committee the Prime Minister set out a programme for immediate reforms in the economy of the country, (b) this not being to the liking of a small coterie described as gangster politicians they "decided to set up one of their men, a corrupt and immoral person, Sanjeeva Reddy as the Congress candidate for the august post of President of India" and (c) this selection was made not only against the wishes of the Prime Minister of India but also without caring to consult the Congress Working Committee, Pradesh Congress leaders and the addressees. The pamphlet then seeks to analyse the reason behind this choice. To quote the words of the pamphlet itself :

"That is because Sanjeeva Reddy himself belongs to this gang. Also the syndicate's plan is that if Sanjeeva Reddy could be made President of India then it will be easier to block all enlightened measures; as President he will obstruct the present Government at every step whenever any action is taken against corruption or in the interest of the common people. The syndicate's agents in Parliament have been openly saying that if Sanjeeva Reddy becomes the President, they will drive out Smt. Indira Gandhi in a few weeks. They are all the more enraged at the nationalisation of the 14 big banks which were only helping big capitalists to profiteer and amass black money. The syndicate is scared that such measures would make Indira Gandhi more

popular with the common man while they themselves have forfeited the confidence of the vast millions of our country. How panicky they are could be seen from the scurrilous writings of one of their lieutenants Tarakeshwari Sinha openly threatening that the syndicate will fight and defeat Indira Gandhi. These unscrupulous bosses prefer that the Congress should suffer a crushing defeat in the next general elections in 1972 rather than that our Prime Minister becomes stronger. For they look upon Indira Gandhi as a thorn in their path; and they think the only way to corner her would be to make Sanjeeva Reddy the President.....

It is 'as part of this conspiracy of the syndicate that Nijalingappa, another syndicate boss (against whom there are many grave charges of corruption) has already approached the Swatantra Party and the Jan Sangh, secretly planning with those anti-national parties for a coalition government with the syndicate leaders."

The rest of the pamphlet is aimed at denigrating Sri Sanjeeva Reddy. It charges him with being a corrupt and unscrupulous politician whose misdeeds had been severely condemned by the High Court of Andhra Pradesh in 1964 and whose record as a Minister for Steel in the Central Cabinet had been so bad that he had to be dropped after the general election of 1967 and was put up as a Speaker of Lok Sabha on the pressure of the syndicate. The pamphlet proceeds to give instances of acts of misdemeanour committed by Sri Sanjeeva Reddy towards members of the other sex. It ends up with an exhortation to the addressees that if they have to carry forward the programme of the Congress in the service of the Indian people and to weed out corruption, nepotism and racketeering, they have to use their powers to defeat the syndicate inter alia by rejecting Sri Sanjeeva Reddy. The pamphlet wind,,,, up with the following:

"On each and every one of us lies the sacred responsibility of seeing to it that this living monument of moral depravity does not become the President of India. Remember this when you cast your vote in the ballot box on 16th August, 1969."

Although Mr. Daphtary put up a faint-argument that this might be the work of any party or group opposing the Congress and interested in its decline and fall, one can not unreasonably take the view that in all likelihood a group of disgruntled Congress members were at the, back of it. It is to be noted that in the whole of the pamphlet which is a fairly long one, there is no reference to any other party excepting where Sri Nijalingappa is described as having approached the Swatantra and Jan Sangh for a coalition Government. There is no reference to the respondent or any other candidate 'at the election and there is no attempt to belittle or ridicule the members of any of the many other political parties in the country.

At or about this time there was frequent reference in the daily newspapers to a group in the Congress dubbed as syndicate and another group described as young Turks who were in open rebellion ',against the syndicate. The pamphlet shows that the authors thereof were of the view that the Prime Minister was attempting to give what according to them was a correct lead to the country and that she was sought to be thwarted by the members of the syndicate. So much so that the latter were said to have entered into A conspiracy to oust the Prime Minister from her position and set up

a coalition government. This is sought to be supported by writing ascribed to Smt. Tarkeshwari Sinha as openly threatening the defeat of the Prime Minister by the syndicate. There are thus strong indications in the pamphlet to show where it could have come from and who were interested in the defeat of Sri Sanjeeva Reddy and the motive behind this move. It has come out in the evidence of a number of persons examined on behalf of the respondent some of whom admitted themselves to have been described in the press as young Turks, that their views about the management of the affairs of the Congress Party by some senior members of it described as syndicate was similar to that expressed in the pamphlet. Sri Krishna Kant (R.W. 32) admitted that he himself, Sri Chandrasekhar (R.W. 5), Sri Mohan Dharia (R.W. 17), Sri Santi Kothari (not examined), Sri Amrit Nehata (R.W. 3), Sri Sashi Bhushan (R.W. 38), Sri R. K. Sinha (R.W. 8) and others were described as young Turks and that the syndicate was composed according to the press of members like Sri Nijalingappa, Sri Atulya Ghosh, Sri S. K. Patil and others. Sri Sanjeeva Reddy according to this witness was also considered to be a part of the syndicate. Most of these persons when examined openly stated that they had decided to go against the selection of Sri Sanjeeva Reddy by the syndicate, that they were supporting the candidature of the respondent and that there was a signature campaign in favour of freedom of vote. Sri Krishna Kant himself admitted having been responsible for getting such signatures and so did Sri Yunus Saleem (R.W.

51). Sri Krishna Kant frankly admitted that when they could not support Sri Sanjeeva Reddy they could not possibly support Sri Deshmukh, another candidate at the election who was a Jan Sangh candidate which left only the respondent on the field. Evidence on much the same line was given by other witnesses examined on behalf of the respondent. Sri R. K. Sinha (R.W. 8) stated that "the syndicate was taking the Congress to the funeral pyre in West Bengal, Madras and Kerala". He also said that the majority of the group known as young Turks had declared their support for the respondent. He admitted having made a public speech about this time to the effect that the members of the syndicate were opposed to the formation of Congress Socialist Party 'and had "planned to fill, the political vacuum after Pandit Nehru." When his attention was drawn to the pamphlet Sri Shashi Bhushan (R.W. 38) approved of the statements made in the first three paragraphs namely that a set of self-seeking, corrupt and unscrupulous persons had grabbed power in the Congress organisation after the death of Pandit Nehru and it was because of their misdeeds that the party had suffered reverses in the election of 1967. It should be noted that Mohan Dharia's attitude in the Presidential election, somewhat different from that of the other young Turks. It would appear that the proclivity of this group of persons described as young Turks and their support for the Prime Minister and opposition to the senior members of the Congress fold like Sri S K. Patil, Sri Kamaraj and others was sought to be utilised in the election petitions by openly averring that the supporters of the Prime Minister were behind the publication and dissemination of the impugned pamphlet. The evidence adduced does not bear this out.

The, authorship of the pamphlet not being traced, we have to see whether the dissemination of it in the manner deposed to was sufficient to establish the commission of undue influence. I have no doubt that if the statements contained in the pamphlet were made the subject of a verbal appeal by one, member of the electoral college to another and particularly those in the Congress fold, a very strong case for the exercise of undue influence would be made out. There would not in my opinion be much difference between such an appeal and an appeal in writing signed by one elector to

another. In such a case it could be said that the elector making the appeal was trying to misuse his position and seeking to influence the other and attempting to interfere with the free exercise of the other's electoral right. But the evidence adduced falls far short of the proof of any such case. It is the admitted case of the parties that the pamphlet was very widely disseminated through the post among members of Parliament and members of the Legislative Assemblies hailing mostly from U.P. but not being confined to that State alone. The case of the petitioners is that not only was the pamphlet broadcast by post but there was free distribution of it among members of both Houses of Parliament i.e., in the Central Hall of Parliament from the 9th to 15th August. Reference was made to the proceedings of the two Houses to show that complaints about the distribution of filthy pamphlets in the Central hall of Parliament bearing on the Presidential election were being made in the Lok Sabha. Although in the pleadings a specific case was made that some prominent members of the Congress Party supporting the Prime Minister like Sri Jagjiwan Ram had gone the residence of certain members of the electoral college for personal delivery of the copies of the pamphlet to them, practically no attempt was made to substantiate such allegation by oral evidence in court. As regards distribution of the pamphlet in the Central hall of Parliament there was evidence given by the following witnesses for the petitioners, namely, Sri Kanwarlal Gupta (P.W. 2), Sri K. S. Chawda (P.W. 3), Sri N'. P. C. Naidu (P.W. 6), Sri Shiv Narain (P.W. 12), Sint. J. B. Shah' (P.W. 13). Sri N. N. Patel (P.W. 14), Sri Mohanlal Gautam (P.W. 27), Sri C. D. Pandey (P.W. 17), Sri D. N. Deb (P.W.

18), Sri Hukumchand Kachwa (P.W. 20), Sri M. Rampure (P.W.

23), Smt. Pushpa Mehta (P.W. 24), Sri Morarji Desai (P.W. 27), Sri Rani Kishan Gupta (P.W. 30), Sri D. S. Raju (P.W. 35), Sri Patil Putappa (P.W. 36), Sri Sher Khan (P.W. 37), Sri Choudhuri A. Mohamed (P.W. 38), Sri C. M. Kedaria (P.W. 39), Sri N. Ramreddy (P.W. 40) and Sri Abdul Ghani Dar (P.W. 41). On the other hand a substantial number of witnesses examined by the respondent numbering no less than twenty gave evidence to the effect that they never saw any such distribution. Effort was made by counsel for the respondent to establish by cross-examination that such distribution of the pamphlet would not have been allowed by the Watch and Ward department of the Houses of Parliament. Among the persons who were supposed to have been responsible for the distribution in the Central hall of Parliament the prominent figures were Sri Yunus Saleem, Sri Chandrasekhar, Sri Sashi Bhushan, Sri Mohan Dharia and some others. It is somewhat strange that most of these people when examined not only denied having participated in the distribution but went to the length of stating that they had never seen the pamphlet before they came to court, although some admitted having heard discussion between members regarding it. According to some witnesses for the petitioners prominent among whom were Sri Morarji Desai, Sri S. K. Patil and some others, the pamphlet was the talk of the town for days and the Central hall of Parliament was full of it.

There is thus a direct conflict of testimony about the distribution of the pamphlet but there can be little doubt that the pamphlet did find its way in the Central hall and I have no doubt that quite a few copies of it had been distributed in the hall itself. That there was a good deal of talk among the members and discussion over the pamphlet admits of no doubt. It is difficult to believe that unless the pamphlet was there in the Central hall people would be discussing the contents of it in the abstract. No witness suggested that he himself had taken a copy of it to the Central hall. The obvious

inference from all this, is that there was some distribution in that hall although probably the petitioners were trying to exaggerate the extent of the distribution while witnesses for the respondent were equally interested in denying it wholesale. Hardly any witness came to the witness box to state that he was not only given a copy of the pamphlet in the Central hall but approached and appealed to personally to carry out the mandate contained in the concluding portion thereof. The substantial evidence of the witnesses for the petitioners was merely to the effect that copies were being distributed in much the same fashion as hand-bills are distributed by advertising agents of tradesmen on the street.

I may refer to the evidence of important witnesses for the petitioners who spoke about such distribution. P.W. 11 Sri Kanwarlal Gupta himself an advocate in his examination-in-chief said that he saw the pamphlet for the first time on the 12th August being distributed in the Central hall of Parliament by some members, namely, Sri Yunus Saleem, Sri Sashi Bhushan and others. According to him the pamphlet created such a prejudice in his mind against Sri Sanjeeva Reddy that he did not pursue his intention to invite him to dinner at his house although he had already mentioned the subject to Sri Sanjeeva Reddy. He also said that he had discussion with other members of Parliament about the pamphlet who held the same view as himself. P.W. 12 Sri K. S. Chawda, another member of Parliament said that he had received a copy of the pamphlet in the Central hall of Parliament from Sri Krishna Kant, member of the Rajya Sabha and having read it came to the conclusion that if Sri Sanjeeva Reddy was elected to the Presidential office he would turn the Rashtrapati Bhavan into a centre of immorality. Of his own he said nothing about Krishna Kant's appeal to him but when he was specifically asked whether Sri Krishna Kant had told him anything at the time he said that Sri Krishna Kant had only mentioned what was in the pamphlet. Sri M. P. Venkataswamy Naidu P.W. 17 claimed to have received a copy from Sri Yunus Saleem in the Central hall. He also said that he wanted to meet the respondent to ask him to contradict the pamphlet because his supporters were distributing it. He went to the respondent's house in Defence Colony but did not succeed in contacting him and wrote a letter requesting him to contradict the contents of the pamphlet but he had never communicated to the petitioners the fact of having written such a letter. Sri Nanubhal N. Patel, P.W. 26. a: member of the Lok Sabha said that Sri Sashi Bhushan, Sri Chandrasekhar and Sri Yunus Saleem were distributing the pamphlet about 12th or 13th August. When they came to the witness to give him a copy he told them that he had already received one at his flat whereupon they asked him whether he had gone through it thoroughly. On the witness's answering in the affirmative they asked him to be careful and to consider all the facts before voting. Sri Mohanlal Gautam who was elected to the Rajya Sabha on the 13th August 1969 and taken his oath on the day following claimed to have received a copy of the pamphlet in the Central hall of Parliament from Sri Shashi Bhushan but had nothing to say about any personal appeal to him. Sri C. D. Pandey P.W. 29 said that he had seen Sri Sashi Bhushan, Sri Krishna Kant. Sri Yunus Saleem and others distributing the pamphlet in the Central hall of Parliament in 2 or 3 batches but they did not give him a copy. In cross-examination he said that he had never told Sri Ramreddy, the first petitioner in Petition NO. 4 that the pamphlet had been given to him in the Central hall of Parliament by Sri Jagjiwan Ram and other members of Parliament. This answer is surprising as the witness himself was one of the petitioners in Petition No. 4 who never cared to read the whole petition. According to the verification of the answer to the particulars given by Sri Abdul Ghani Dar, Sri C. D. Pandey had received a copy of the pamphlet in the Central hall of Parliament from Sri

Chandrasekhar and this was based on the information alleged to have been received from Sri C. D. Pandey himself. At this stage I may mention-that the major portion of the particulars regarding the distribution of the pamphlets and the information thereof claimed to have been received by Sri Abdul Ghani Dar in particular from the recipients were not corroborated by most of these persons when they figured as witnesses. Sri Hukumchand Kachwa, P.W. 32, a member of the Jan Sangh said in his examination-in- chief that he had got a copy of the pamphlet in the Central hall of Parliament from Sri Sashi Bhushan Bajpay and Sri Jagjiwan Rain and the former had told him that the witness should support the respondent as he was a champion for the cause of labour and that Sri Sanjeeva Reddy was a characterless person as could be seen from the pamphlet itself. He would have the court believed that after reading the pamphlet he thought that a person possessing a character like Sri Sanjeeva Reddy's if elected would convert the Rashtrapati Bhavan into a brothel. Sri Mahdevappa Rainpure, P.W. 35 said that he, had got a copy of the pamphlet from Sri Yunus Saleem who had told him at the time of the distribution that the witness could get enough information from the pamphlet. Sri R. K. Gupta, P.W. 43, a member of the Lok Sabha who had received a copy of the pamphlet at his residence said that he had one to the respondent thereafter on being informed by his daughter that a telephone call had come from the respondent. The respondent had asked the witness to support him which the latter refused. The witness however claimed to have told the respondent that pamphlet like the one he had received should not be used and should be contradicted by his party whereupon the respondent had sought to excuse himself by saying "What can I do." Although he had seen the pamphlet being, distributed in the Central hall he did not remember who were doing it. Sri D. S. Raju, P.W. 49, a member of the Lok Sabha, said that he had received a copy in the Central hall of Parliament and so far as he could remember it was Sri Yunus Saleem who had passed it on but had not spoken to him at the time of making it over. Sri Patil Putappa, a member of the Rajya Sabha, P.W. 50, said that he had seen Sri Yunus Saleem distributing the pamphlet in the Central hall and had received a copy from him. He claimed to have told Sri Yunus Saleem that the latter was acting improperly whereupon Sri Yunus Saleem had rebuked him saying that it was none of the witness's business. Sri Ramreddy P.W. 54, one of the petitioners in Petition No.4 said that he had received a copy in the Central hall of Parliament from Sri Yunus Saleem and Sri Sashi Bhushan distributing copies together. He also said that he had seen not only Sri Yunus Saleem and Sri Sashi Bhushan but Sri Krishna Kant, Sri S. M. Banerjee, Sri Moulana Ishaqi, Sri Chandrasekhar and Sri Mohan Dharia all named in, the petition distributing the pamphlet. He averred that he had complained to the Deputy 'Speaker of the House about the unlawful activities of Sri Yunus Saleem whereupon the latter had run away from the house. He also said that the proceedings of the House would support his statement. Reference was made in this connection to column 3813 of the proceedings of the Rajya Sabha dated the 13th August 1969. The official report of the proceedings shows that Sri Ramreddy was making a complaint about Sri Yunus Saleem going about collecting signatures on a piece of paper and making a political campaign of collecting signatures to the paper in the house and further that he was going from member to member. On being asked by the Deputy Chairman as to whether the witness himself had been approached, Sri Ramreddy said that Sri Yunus Saleem had gone to Sri Muniswamy whereupon Sri Muniswamy said that he (Sri Yunus Saleem) had asked one Sri Kulkarni to sign. Sri Ramreddy thereupon had said that Sri Yunus Saleem had some document of a political nature in his hand and the house was not meant for such activities. When he was referred to a passage in Petition No. 5 wherein reference was made to Sri Yunus Saleem's activities he said that he was not very definite "

about the signature business" and he did not know whether Sri Yunus Saleem was in fact collecting signatures of others on any document. It was only Sri Abdul Ghani Dar who said that at the time of giving him a copy of the pamphlet in the Central hall Sri Yunus Saleem had told him that Sri S. Reddy was a debaucher, that he was in collusion with Jan Sangh, that the Prime Minister and others were all against Sri Sanjeeva Reddy and that if Sri Sanjeeva Reddy won the election it would be a victory for Jan Sangh and Muslims would be eliminated. The above is not exhaustive of the evidence adduced on behalf of the petitioners with regard to the distribution of the pamphlet in the Central hall as a means of exercising undue influence over electors but it is a fair summary of the evidence adduced which on the face of it—barring that of Sri Abdul Ghani Dar, falls far short of a personal appeal or any effort to persuade a voter by deflection of his will and interference with his electoral right. Sri Yunus Saleem as well as the other persons commonly referred to as young Turks, stoutly denied having ever engaged themselves in any distribution of the pamphlet and most of them disclaimed ever having come across it before they figured as witnesses in court. Sri Abdul Ghani Dar's statement in the witness box about Sri Yunus Saleem having taken him aside for making an appeal is directly contradicted by a statement in the petition where in paragraph 13 (b) (iv) he had stated that his talk with Sri Yunus Saleem had taken place in the presence of a number of members of Parliament. It would be expected that Dar would remember the facts of the distribution more clearly on the 16th September 1969 when the petition was filed than when he came to the witness box in March 1970. Whatever be the reason for the deviation in the Statement on oath before the court from that in the petition it does not inspire confidence. The witnesses for the respondent adduced various reasons in their lengthy cross-examination based mainly on political animosity for the witnesses for the petitioners deposing in regard to distribution of the pamphlet by them. From the manner in which these reasons were given out in quick succession it would appear that they had come well prepared with the case they had to meet. However that may be there was direct conflict of testimony between the two sides and it would not be uncharitable to remark that truth sat very lightly on the lips of most of the witnesses. In my view the evidence falls far short of any personal appeal through the means of the pamphlet and I cannot hold that the offence of undue influence was committed by some people by merely distributing the same. Such distribution may attract culpability under s. 171-G of the Indian Penal Code but would not per se attract s. 171-C. I do not therefore find it necessary to refer to the evidence of 'witnesses for the respondent on the question of the exercise of undue influence by distribution of the pamphlet. While I find myself unable to say that they were all speaking the truth when they said that they had not seen the distribution of it in the Central hall or that they had not seen a copy of the pamphlet before they came to the witness box, I cannot hold in favour of the petitioners merely because some of the witnesses for the respondent were not witnesses of truth. It would be unprofitable to examine the evidence closely to find out where they lied or the extent of untruth uttered by them. Such an analysis might have become necessary if I had come to the conclusion that there was a prima facie case made out by the petitioners about the exercise of undue influence by mere dissemination of the pamphlet which could be contradicted by the respondent's witnesses.

The above being my view on the question of the exercise of undue influence by means of the publication of the pamphlet and the dissemination of it, the question of the respondent's conniving at it does not arise. I may however indicate shortly the respective cases of the parties. It was the case of the petitioners that the pamphlet originated from the camp of the Prime Minister and her

supporters who were actively helping the respondent in his election campaign and it was these supporters who had taken to the mean trick of publication of the pamphlet at the eleventh hour before the election so that there could be no effective counter action to the wild propaganda. _Whatever the charges raised against the Prime Minister in the petition no evidence was adduced to show that she was helping the respondent although it may be said that she did not help the cause of Sri Sanjeeva Reddy in the way she had done in the case of Dr. Zakir Husain. Three, witnesses for the petitioners stated in their examination that they had been to the respondent's house in Defence Colony after the commencement of the publication of the pamphlet requesting him to make a statement himself in contradiction of the allegations contained therein and making it clear that he himself had nothing to do with it. It is difficult to appreciate what led these persons to think that the respondent had anything to do with the pamphlet or that he was the proper person to issue a contradiction to the imputations therein made against Sri Sanjeeva Reddy. As I have already noted, the name of the respondent does not occur at all in the pamphlet nor is there any remote reference to him in it. The respondent was not the only other contestant for the office. Sri Madhu Limaye, P.W. 8, and some witnesses for the respondent thought that it was the work of enemies of the respondent. Any statement of the respondent disowning the pamphlet or even asking the electors to ignore it would only excite suspicion against him as involved in its publication. Sri N. P. C. Naidu P.W. 17 who claimed to have a copy of the pamphlet from Sri Yunus Saleem on the 11 th or 12th August said that he had gone to the respondent's house in Defence Colony to get a contradiction to the pamphlet but could not meet him, as a result of the talk he had with the respondent's supporters who were there and later wrote a letter to him asking him to counteract the propaganda in the pamphlet. The respondent however denied having received any such letter. Smt. Tarkeshwari Sinha P.W. 34, said that she had gone, to the respondent's house in Defence Colony on the 14th August and had met him in a verandah and shown the pamphlet to him and asked him to repudiate the contents thereof when the respondent had said "What can I do about it." As the respondent was unresponsive she had to come away. Not only was this visit openly disputed by the respondent but several witnesses were examined to show that she had not gone there. The security man said to have been posted in the respondent's house deposed to the effect that he knew Smt. Tarkeshwari Sinha and was positive that she had not gone there on the 14th August. The respondent himself said that the suggestion that in the month of August a visitor of the position of Smt. Tarkeshwari Sinha would have been received by him not in the air-conditioned drawing room where he was sitting but outside in the uncomfortably hot verandah was fantastic. The respondent's son-in-law also gave evidence to the same effect.

Sri R. K. Gupta, P.R. 43, said that he had met the respondent two or three days before the date of the poll and told him that the pamphlet should be contradicted by his party when the respondent gave him the same reply as he had done to Smt. Tarkeshwari Sinha. Again this evidence was denied by the respondent as well as by his son-in-law. The evidence adduced on the two sides is directly contradictory to each other and it would have been the duty of the court to analyse the same in greater detail and indicate the reasons for accepting one version and rejecting the other if the court was to take the view that there was exercise of undue influence by the mere dissemination of a sordid pamphlet. In the circumstances of the case it would be useless to go into the question any further. Another allied question which loomed large. during the examination of the witnesses was whether the respondent had in his election campaign gone to Lucknow and addressed members of

the Legislative Assembly there and canvassed their support in his favour basing his claim on the support of the Prime Minister. "is was deposed to in a general way by Sri Ram Singh P.W. 19 while Sri Mumtaz, Mohamed Khan P.W. 44 went further and said that the respondent had told people at Lucknow openly that Sri Sanjeeva Reddy was not a suitable candidate and that there were many stains on his character. Both these witnesses as also Sri Bansidhar Pandey, P.W. 18, Sri Jagdish Prasad, P.W. 20, Sri Rajendraprasad Singh, P.W. 21, Sri Basant Lal Sharma, P.W. 22, Sri Rampyre Panika, P.W. 37 and Sri Abdul Saleem Shah, P.W. 38 deposed to the effect that two or three days after the visit of the respondent to Lucknow, Sri Dinesh Singh, the External Affairs Minister, had, also gone there, met the members of the Legislative Assembly in groups of four or five in their hostel known as Darul-Shafa and openly told them that the respondent was the candidate of the Prime Minister and that if the addressees did not support his candidature they would lose all the patronage of the Prime Minister in the future. Some even said that Sri Dinesh Singh had threatened them with refusal of party tickets in future elections if they were to go against the wishes of the Prime Minister. So far as the part imputed to Sri Dinesh Singh is concerned he denied having moved out of Delhi between the 1st and 16th August and said that his first visit to Lucknow about this time was on 22nd August after the poll had taken place' It was put to him in his examination-in-chief as to whether he did go to Lucknow on the 9th, 10th or 11th August and his answer was in the negative and he averred that so far as he could recollect he had not gone to Lucknow before the 22nd. Sri Dinesh Singh was subjected to prolonged cross-examination and the diaries of his engagements maintained by his secretaries were made the subject of close scrutiny before the secretaries were made the subject of close scrutiny before the Court. The evidence of Sri Dinesh Singh and of several other witnesses for the respondent was to the effect that whenever Sri Dinesh Singh left Delhi a tour programme would be issued for the guidance of officers in places to be visited by him and no such tour programme was issued in the month of August before the 22nd. Sri Dinesh Singh further stated that he had attended an invitation to a party at Mysore House given by Sri G. S. Pathak, the then Governor of Mysore. In this he was supported by Sri I. K. Gujral who produced a letter of invitation confirming the throwing out of a party at the Mysore Home by Sri G. S. Pathak on the 10th August and invitation to him thereat and stated that he distinctly remembered having met Sri Dinesh Singh in that party. Quite a number of witnesses examined on behalf of the respondent gave evidence to the effect that if Sri Dinesh Singh had gone to Lucknow between the 1st and 16th August they would have come to know of it and so far as their recollection went Sri Dinesh Singh did not go there during that period. While it is true that the diaries produced by the Secretaries of Sri Dinesh Singh were not as full or complete as regards his engagements as one might expect them to be, I have no hesitation in holding that Sri Dinesh Singh did speak the truth in that he did not go to Lucknow during the period 1st to 16th August. It has come out in evidence that Sri Abdul Ghani Dar was preparing to launch an election petition against the respondent practically immediately after the declaration of the result and that he was busy collecting evidence in support of his petition. Apart from the absence of any tour programme of Sri Dinesh Singh it should not have been difficult for the petitioners to produce evidence either from the records of the railways or the Indian Airlines to show that some reservation of accommodation had been made for Sri Dinesh Singh's journey to Lucknow and back at or about this time. No attempt was made to produce any such records. Counsel for the petitioners even went to the length of suggesting to Sri Dinesh Singh in cross-examination that it was possible for him to have travelled to Lucknow from Delhi by road and come back the same way so as to leave no record of reservation

either by rail or by air. In my view, the suggestion is of little value' After all even according to the evidence of witnesses for the petitioners Sri Dinesh Singh's visit was not a secret one. He is supposed to have gone there to meet people in order to canvass Support for the respondent from a large number of members of the U.P. Legislative Assembly and there was no reason why he should try and 'avoid a more comfortable journey by rail or air rather than undertake motor-car journeys of over 300 miles each way. My definite conclusion is that Sri Dinesh Singh did not go to Lucknow as alleged by some of the witnesses for the petitioners at or about the time alleged and consequently he did not canvass support in favour of the respondent as imputed to him.

As regards the evidence of the two witnesses about the respondent addressing members of, the Legislative Assembly of U.P. in his own support by saying that he was the candidate of the Prime Minister or that Sri Sanjeeva Reddy was not a fit person for election to the high office of the President of India, I have no hesitation in holding that it cannot be true. According to the evidence of Sri Mumtaz Mohamed Khan, P.W. 44, the persons present at the time when the respondent was castigating Sri Sanjeeva Reddy were Sri Basant Lal Sharma, Sri Abdul Saleem Shah and Sri Kalpanath Singh. Sri Kalpanath Singh was not examined but the other two were and neither of them had anything to say on this subject. According to Sri Abdul Saleem Shah it was Sri Dinesh Singh who had told the members of the Legislative Assembly at Darul-Shafa that Sri Sanjeeva Reddy and his group were working in collusion with Jan Sangh and it would not be proper to vote for him. Sri Dinesh Singh is also alleged to have said that Sri Fakiruddin Ali Ahmed wanted that no Muslim should vote for Sri Sanjeeva Reddy, as he and his supporters were anti-Muslim. As I have held that Sri Dinesh Singh did not go to Lucknow at the time alleged he could not have canvassed support for the respondent as deposed to by the witnesses.

In his evidence the respondent stated that he had not spoken to the Prime Minister or any other Minister before announcing his candidature for the office of the President of India. He had nothing to do with the Congress Party after 1957. After admitting office of the Vice-President of India working as the President he had left Rashtrapati Bhavan and gone to his son-in-law's place in Defence Colony. He had been out of Delhi from the 28th July to 13th August going round to the different States : he had come back to Delhi on the 10th August only for a few hours. He admitted having gone to Lucknow on his tour but he did not meet the legislators there in groups as suggested by some of the witnesses but had spoken to them at a fairly well-attended meeting. He denied ever having referred to Sri Sanjeeva Reddy in his speech or said anything about his character. He denied having any knowledge of the distribution of the pamphlet and stated expressly that nobody had ever complained to him that a pamphlet against the personal conduct and character of Sri Sanjeeva Reddy was being distributed. He did not see Sri Abdul Ghani Dar's letter alleged to have been written to him on, the 11th August. He did not meet the Prime Minister between the 20th July and 16th August. He said that he had published a programme of him intended tour to the capitals of the different States like Lucknow, Patna, Calcutta etc. and had informed some of his friends who were taking interest in him about his proposed visits. He stated further that' although he had toured the States fairly extensively he did not approach the members of Parliament in Delhi personally as he was fairly well known to them.

Counsel for the petitioners tried to make out a case that the respondent did not do any canvassing in his own support in Delhi because he was aware that others were effectively doing it. It was even suggested that some sort of arrangement must have been arrived at in July 1969 that if his name was not acceptable to the Congress Parliamentary Board he would immediately announce his own candidature for the office of the President. The respondent stoutly denied this and said there was no truth in it.

In my view the charges levelled against the respondent as mentioned above were not borne out by the evidence. Another aspect of the case of the petitioners under the heading of undue influence was that an attempt was made by a number of persons supporting the respondent to raise a scare to the effect that a vote in favour of Sri Sanjeeva Reddy would be against the interest of persons professing the Muhamedan faith. In Petition No. 5 of 1969 it was formulated in paragraph 13 (c) (iii) to the effect that Sri Fakhrudin Ali Ahmed and Sri Yunus Saleem had represented to the Muslim voters that Sri Sanjeeva Reddy was in fact a candidate of the Jan Sangh Party and hold out a threat that if he was successful the fate of the Muslim community in India would be sealed. An instance is given of the conversation of Sri Yunus Saleem with Sri Abdul Ghani Dar and such influence was said to have been exercised over all the Muslim voters in the country specially those in Parliament. In the particulars supplied with regard to this pleading in the petition, it was said that the threat was given by Sri Fakhrudin Ali Ahmed to Sri Abdul Ghani Dar, Sri Sher Khan and Sri Choudhary A. Mohammed at their residence over the telephone by Sri Yunus Saleem to these three persons on the same day in the Central hall of Parliament. There was some amplification of it in the evidence. Sri Abdul Ghani Dar's statement in the witness box that Sri Yunus Saleem had called him aside in the Central hall of Parliament to convey the threat to Muslims in case of Sri Sanjeeva Reddy's success varies widely from his case in the petition that such communication was made in the presence of a number of members of Parliament. Sri Abdul Ghani Dar had said further that he had been approached over the telephone by Sri Fakhrudin Ali Ahmed in the evening of the 11th August, that Sri Fakhrudin Ali Ahmed had told him of the information conveyed to him by Sri Yunus Saleem, that in spite of his warning the witness had decided not to side with the respondent and the Prime Minister and claimed to have addressed a letter to the Muslim members of Parliament in this regard. He also said that he had a talk with Sri I. K. Gujral early on the morning of the 16th August when the latter had told him that the Prime Minister expected full support from him and that if Sri Sanjeeva Reddy came out successful the Prime Minister might not continue in office and Dar also claimed to have sent a telegram to the Prime Minister immediately thereafter appraising her of all this. On his attention, being drawn to the difference between the pleading and the oral evidence about the conversation with Sri Yunus Saleem and being asked to state which of the statements was correct the surprising answer was that both were correct.

Similarly, Sri Choudhary A. Mohamed P.W. 52 spoke of having received a telephone call from Sri Fakhrudin Ali Ahmed on the 10th or 11th August to the effect that Muslims stood to gain in the event of the respondent's success while the Muslim community would be in danger if Sri Sanjeeva Reddy came out successful in the election. According to Sri Choudhary A. Mohamed this telephone conversation was followed by personal talk in the office of Sri Fakhrudin Ali Ahmed within the precincts of the Houses of Parliament. When Sri Fakhrudin Ali Ahmed told Sri Sher Khan who had accompanied the witness that in cases they decided to go against the respondent their claims for

Congress nominations in future elections would be ignored. Sri Sher Khan P.W. 51 spoke to having received a telephone call from Sri Fakhrudin Ali Ahmed in a similar way and claimed to have met him at about noon the same day in the Central hall of Parliament when the Minister had emphasised on him the need to support the respondent warning the witness that in default thereof the latter's name would not be included in Committees of the Houses of Parliament or in future delegations. This witness had further said that he had received a telephone call from Sri Yunus Saleem on the same day when a similar conversation had taken place.

It has already been noted that according to Sri Abdul Saleem Shah P.W. 38 Sri Dinesh Singh had held out a similar threat to him and other Muslims during his visit to Lucknow in pre-election days, and evidence much to the same effect was given by Sri Mumtaz Mohamed Khan, P.W. 44. So far as the last two witnesses are concerned I must reject their testimony as I have already held that Sri Dinesh Singh did not visit Lucknow as alleged. Both Sri Fakhrudin Ali Ahmed and Sri Yunus Saleem denied having held out a threat to any Muslim elector as deposed to. Sri Fakhrudin Ali Ahmed said that he had never received any letter from Sri Abdul Ghani Dar bearing date the 13th August 1969. He further denied having spoken to Sri Sher Khan or Sri Choudhury A. Mohamed as suggested by these two witnesses. Sri Yunus Saleem admitted having had a talk with Sri Sher Khan about the Presidential election but added that when he was informed that Sri Sher Khan was committed to Sri Nijalingappa and that he was working for Sri Sanjeeva Reddy the question of any further talk did not arise. So far as Sri Choudhury A. Mohamed is concerned, Sri Yunus Saleem admitted that he used to visit him at his house but no talk regarding the Presidential election had taken place between them. The witness admitted having had a talk with Sri Abdul Ghani Dar in the Central hall of Parliament about the Presidential election. He admitted having suggested to Sri Abdul Ghani Dar that he should consider whether it would be advisable in the interest of democracy and socialism to support Sri Sanjeeva Reddy or the respondent. He further admitted having held discussion with many members of the Parliament both Muslim and non-Muslim on the question of the Presidential election but it would not be correct to say that he had approached only Muslim members as suggested or had appealed to anybody on the ground of threat to a particular community. In connection with the above a note may be made, of the statement of some other Muslim witnesses. Syed Ahmed Aga R.W. 10, a member of the Lok Sabha from Kashmir said that he had seen people procuring signatures in the name of party discipline in support of Sri Sanjeeva Reddy's candidature and one such person was Sri Sher Khan, a witness in this case. Asked whether he had been contacted by any Minister of the Central Government to vote for the respondent in the interest of the Muslims his answer was in the negative. Evidence much to the same effect was given by Sri P. M. Syed, R.W. 13, Sri Asraf Ali Khan, R.W. 27 stated that there was no propaganda in favour of any of the candidates on communal basis so far as he was aware and he knew that several Muslim gentlemen were working for Sri Sanjeeva Reddy. Sri Abid Ali R.W. 33 also stated that no appeal was made to him by anybody on communal grounds and similar was the statement of Sri Mohamed Ali Khan R.W. 35. Considering the evidence as a whole I am of the view that the petitioners have failed to establish beyond reasonable doubt that any pressure was brought to bear upon the Muslim electors on communal grounds. Sri Abdul Ghani Dar was out to collect and create evidence very soon after the declaration of the result and his statements do not inspire any confidence. In my view he was trying to make out a case in support of his petition from the very beginning and the tape record of his conversation with Sri Jagat Narain R.W. 25 lends strong support to this view. There can be no denying the fact that Sri

Jagatnarain had tried to contact Sri Abdul Ghani Dar in order to dissuade him from filing the election petition. On the first occasion of the telephone call Sri Abdul Ghani Dar happened to be out and the telephone receiver was picked up by his wife. According to Sri Abdul Ghani Dar, Sri Jagatnarain had conveyed an impression to his wife that there would be peril to him in case Sri Dar insisted on filing the petition. Sri Dar's wife did not come to give evidence in support of it and the tape record of the conversation between Sri Dar and Sri Jagatnarain suggests that while Sri Jagatnarain was trying to make out that he had not held out any threat to the life or limb of Sri Dar the latter was trying his best to get an admission to that effect from Sri Jagatnarain. I may also note that officers from the Directorate of Telephone from Delhi were summoned to produce records of trunk telephone calls made by Ministers in the election days obviously with the idea of showing that they were approaching others for the purpose of active propaganda in support of the respondent. The best evidence in this regard would have been the statement on oath of persons who had been so approached but no attempt worth the name was made in this regard.' Charges of propaganda on communal basis on the strength of conversations either over the telephone or personally but covertly can be launched very easily but in the absence of any independent corroboration they do not inspire credibility and on the evidence in this case I am not satisfied that such charges have been established or that the evidence of witnesses who have spoken about such propaganda must be accepted.

On the question as to whether the Prime Minister exercise any undue influence over Sri Nijalingappa, Sri S. K. Patil, Sri Kamaraj, Sri Morari Desai -and Sri Y. B. Chavan by threat of serious consequences following their resolution to nominate Sri Sanjeeva Reddy as the Congress candidate', it is undeniable that she was not a little vexed with the attitude of those persons in setting up as candidate Sri Sanjeeva Reddy when she herself had put forward the name of Sri Sri Jagjiwan Ram. Both Sri Morarji Desai and Sri Nijalingappa came to the witness box and deposed about the Prime Minister having used the words "serious consequences would follow". In one of the letters to the Prime Minister Sri Nijalingappa had mentioned this to which there was no reply. As the Prime Minister did not come to the witness box to give a denial to this the statements of Sri Morarji Desai and Sri Nijalingappa must be accepted. But the question still remains whether there was a threat to anybody's electoral right at that time so as to amount to the commission of undue influence. Electoral right is defined in s. 171-A(b) as the right of a person to stand or not to stand as, or to withdraw from being, a candidate or to vote or refrain from voting at an election. The pleading does not make out a case of threat to Sri Nijalingappa and others to refrain from voting at the election but it is limited to a threat to make them change their decision to nominate Sri Sanjeeva Reddy as the Congress candidate. There is no plea of threat to Sri Sanjeeva Reddy to withdraw from being a candidate. as the threat pleaded being one to coerce Sri Nijalingappa and others to change their decision to nominate does not affect their electoral right. There was no evidence of any subsequent threat by the Prime Minister -and as she herself was responsible for filing the nomination paper of Sri Sanjeeva Reddy there could be no question of her holding out a threat to Sri Nijalingappa, and others to make them change their decision to nominate a candidate.

There was no evidence of any undue influence having been committed as alleged in paragraph 13 (c) (v) of the petition. No member of the legislative assembly of West Bengal or Andhra Pradesh came to give evidence to the effect that the respondent or his supporters had raised a scare that Sri

Sanjeeva Reddy, if successful in the Presidential election, would enforce President's Rule in those States. In my view the plea that a scare was created by the workers and supporters of the respondent to the extent that Sri Kamlapati Tripathy, the President of the U.P. Congress Committee pleaded for freedom of vote on the 13th August 1969 completely departing from his earlier attitude that the members of the electoral college belonging to the Congress fold should back Sri Sanjeeva Reddy solidly can be dismissed summarily. Sri Kamlapati Tripathy R.W. 61 gave a cogent explanation for his change of attitude just before the poll and according to him he pleaded for freedom of vote in order to avoid a split in the party which was fairly evident at that time. The evidence adduced by the petitioners does not establish that the change of attitude was due to any scare by the workers and supporters of the respondent as alleged. The rift in the party became a matter of public knowledge in the first week of August and the process of the members of the Congress party arraying themselves in hostile camps went on practically till the eve of the election. There was no evidence of any scare being caused by the commission of any undue influence.

Inasmuch as I have come to the conclusion that the evidence adduced does not establish the exercise of undue influence in the election in any of the forms raised in, the petition, the question of the result of the election being materially affected thereby does not arise. But I may point out that in order to substantiate such a ground for setting aside an election it is not enough for witnesses to come and say that they were shocked or pained by reading the pamphlet as most of them gave out. Only two witnesses came to the witness box and said that they had changed their minds to vote for Sri Sanjeeva Reddy after perusal of the pamphlet. Mr. Daph- tary argued that there was nothing in the Act of 1952 which forbade a person from disclosing in his evidence which way he had voted and that it was open to witnesses to come and state the reaction of the pamphlet on their minds and express how it 'had affected their conduct at the poll. While I do not 'think it necessary to express any opinion on this it can be safely held that even if the exercises of undue influence had been proved the evidence of only two witnesses to show that their electoral right had been interfered with thereby would not have been enough for the purpose of setting aside the election.

My conclusion therefore on the issues regarding undue influence may be summed up as follows. There was a fair amount of circulation of the pamphlet, in the Central hall of Parliament among members of the electoral college by a number of them. Undeniably there was considerable publication of it by post both to electors in Delhi and outside. The mere dissemination of the pamphlet did not amount to exercise of any undue influence or interference with any electoral right. It had to be followed up either by a personal verbal appeal or an appeal in writing but there was no evidence thereof in this case. There was no appeal to Muslim members on grounds of religion to vote in favour of the respondent in preference to Sri Sanjeeva Reddy. There was no evidence of exercise of undue influence by Central Ministers over any members of the electoral college by any threat that in case they failed to vote for the respondent they would lose the patronage of the Prime, Minister. The offence of undue influence was not committed by the respondent or any of his workers. The respondent himself was not guilty of any such commission. There was no commission of the offence of undue influence by anybody with the connivance of the respondent and the result of the election was not materially affected as a result of any commission of the offence of undue influence. As regards issue 4(a) in Election Petitions 4 and 5 of 1969 my view is that some of the allegations made in paragraphs 8(3) and (13) of the petition would be sufficient pleading of

commission of undue influence under s. 18 (1) (a) of the Presidential and Vice-Presidential Elections Act, 1952. As regards issue 4(b) the, only allegation which was substantiated was a fair amount of publication and dissemination of this scurrilous pamphlet which by itself did not amount to the exercise of undue influence. Sri Abdul Ghani Dar's evidence on this point is wholly unacceptable. My answer to issue 4(c) in all its branches is in the negative.

We indicated on the 11th May 1970 that we would not award any costs to either side. As the respondent has succeeded in the petition normally he could expect to get an award of costs in his favour. But one cannot overlook the fact that the bulk of the oral evidence in this case centered round the question as to whether there was publication of the scurrilous pamphlet in the Central hall of Parliament. A very large number of petitioners' witnesses came to give evidence in support of it while the respondent examined a host of witnesses to disprove this fact. Although in the view I have taken it was not necessary to name the persons who were guilty of such publication I have already indicated that quite a number of members of Parliament was responsible for it. The hearing of this case was protracted unreasonably by the examination of witnesses on this one question and as the respondent has not succeeded in disproving dissemination of the pamphlet in the Central hall it could not be right to make an award of costs in his favour. The litigation was not one of an ordinary type and it was conducted with great zeal on either side. It has divulged a sad lack of responsibility and uprightness in the elected representatives of the people figuring either as witnesses for the petitioners or as witnesses for the respondent. In a case like this where both sides are responsible for putting into the witness box a large number of persons who deliberately gave evidence which was not true, the proper course is not to award costs even to the successful party.

G.C.

Petitions dismissed.