Supreme Court of India
Kanwar Lal Gupta vs Amar Nath Chawla & Ors on 3 October, 1974
Equivalent citations: 1975 AIR 308, 1975 SCR (2) 269
Author: P Bhagwati
Bench: Bhagwati, P.N.

PETITIONER:
KANWAR LAL GUPTA

Vs.

RESPONDENT:
AMAR NATH CHAWLA & ORS.

DATE OF JUDGMENT03/10/1974

BENCH:
BHAGWATI, P.N.
BENCH:
BHAGWATI, P.N.
SARKARIA, RANJIT SINGH

CITATION:
1975 AIR 308 1975 SCR (2) 269
1975 SCC (3) 646
CITATOR INFO :
RF 1975 SC 349 (32)
O 1975 SC2299 (113,119,120,249,490,493,495,4
RF 1981 SC1068 (9)
D 1985 SC1133 (2,3,6,8,14,17,21)
RF 1987 SC1577 (21)

ACT:
Representation of the People Act (43 of 1951) ss. 77(1) and 123(6)-Expenses incurred by party sponsoring candidate in excess of the prescribed limit-If and when a corrupt Practice-Reform of election law suggested.

HEADNOTE:
Section 77(1) of the Representation of the People Act, 1951, provides that every candidate at an election shall, either by himself or by his election agent, keep a separate and correct account of all expenditure, in connection with the election, incurred or authorised by him or by his election agent between the date of the publication of the notification calling the election and the date of declaration of result thereof, both dates inclusive; and s. 77(3) gays that the total of the said expenditure shall not exceed such amount as may be prescribed.
The objects of enacting a ceiling on the expenditure which

may legitimately be incurred in connection with an election are :

(a)It should be open to any individual or to any political party, however small, to be able to contest an election on a footing of equality with any other individual or political party, however rich and well financed it may be, and no individual or political party should be able to secure an advantage over others by reason of its superior financial strength. The democratic process can function efficiently and effectively, for the benefit of the common good and reach out the benefits of self-government to the common man only if it brings about a participatory democracy in which every man, howsoever lowly or humble he may be, should be able to participate on a footing of equality with others. Now money. plays an important part in the successful prosecution of an election campaign by buying advertisement and canvassing facilities, by providing the means for quick and speedy communications and movements and sophisticated campaign techniques, and also by the employment of paid workers where volunteers are found to be insufficient. Therefore, if one political party or individual has larger resources available to it than another the former would certainly, under the present system of conducting elections, have an advantage over the latter in the electoral process. [265C-F]

(b)The other objective of limiting expenditure is to eliminate, as far as possible, the influence of big money in electoral process. If there were no limit on expenditure political parties would go all out for collecting contributions and obviously the largest contributions would be from the rich and the affluent who constitute but a fraction of the electorate. It is likely that some elected representatives would tend to share the views of the wealthy supporters of their political party, either because of shared background and association, increased access or subtle influenceswhich condition their thinking. In such an event, the result would be that thouostensibly the political parties which receive such contributions may profess an ideology acceptable to the common man, they would in effect and substance be the representatives of a certain economic class, and their policies and decisions would be shaped by the interests of that economic class. Persons of a particular class who have exclusive governmental power, even if they tried to act objectively, would tend to overlook the interests of other classes or view those interests differently. To this natural tendency may be added the fact that office bearers and elected representatives may quite possibly be inclined, though unconsciously and imperceptibly, to espouse the policies and decisions that will attract campaign contributions from affluent individuals and groups. Preelection donations would be Rely to operate as post-election promises resulting ultimately in the casualty of the interest of the common

man. The small man's chance is the essence of Indian democracy and that would be stultified if large contributions from rich and affluent individuals or groups are not divorced from the electoral process.
[266E-F, 267C-D, E-F, G-H]
2-M255SupCII75
260
Under s, 123(6) not only is the incurring of expenditure in excess of the prescribed limit a corrupt practice but also the authorising of such expenditure. Authorising may be implied or express, and whether a particular expenditure wag impliedly authorised by the candidate would depend upon the facts and circumstances of each case as appearing from the evidence adduced before the court. [264H-265B]
The reasonable interpretation of the provision, which would carry out its object and intendment and suppress the mischief and advance the remedy by purifying the election process and ridding it of the pernicious and baneful influence of big money, is, that the legislature could never have intended that what the individual candidate cannot do the political parties sponsoring him, or his friends and supporters, should be free to do. When a political party sponsoring a candidate incurs expenditure specifically in connection with his election, as distinguished from expen-diture on general party propaganda, and the candidate knowingly takes advantage of it or participates in the programme or activity or consents to it or acquiesces in it, it would be reasonable to infer, save in special circumstances, that he impliedly authorised the political party to incur such expenditure; and he cannot escape the rigors of the ceiling by saying that he has not incurred expenditure but big political party has done so. The party candidate does not stand apart from his political party and if the political party does not want its candidate to incur the disqualification it must exercise control over the expenditure which may be incurred by it directly to promote the poll prospects of the candidate. The same proposition must hold good in case of expenditure incurred by friends and supporters directly in connection with the election of the candidate. If a candidate were to be subject to the limitation of the ceiling but the political party sponsoring him or his friends' and supporters were to be free to spend as much as they like in connection with his election, the object of imposing a ceiling would be completely frustrated and the beneficent provision enacted in the interest of purity and genuineness of the democratic process would be wholly emasculated. [268A-F]
Ranajaya Singh v. Baijnath Singh & Ors. [1955] 1 S.C.R. 671, Ram Dayal v. Brijraj Singh & Ors. [1970] 1 S.C.R. 530, Magraj Patodia v. R. K. Birla & Ors. [1971] 2 S.C.R. 118 and B. Rajagopala Rao v. N. G. Ranga, A.I.R. 1971 S.C. 266, referred to.
In the present case, the first respondent's election to the

Lok Sabha was challenged by the petitioner on various grounds, one of which wag that the first respondent incurred or authorised expenditure in excess of the prescribed limit of Rs. 10,000 in contravention of s. 77 and committed corrupt practice under s. 123(6). The High Court dismissed the election petition.

Allowing the appeal to this Court,

Held : (1) The total expenditure proved to have been incurred or authorised by the first respondent exceeded the prescribed limit and therefore his election should be set aside on the ground of corrupt practice defined in s. 123(6) [316F]

(a)A chart was furnished to the petitioner giving information as to the dates and places of the public meetings held in connection with the election of the first respondent and the names of the speakers who spoke at those public meetings. This chart was prepared in compliance with the directions of the trial court from the official records in the possession of the I.G. of Police. Therefore it is relevant and admissible in evidence under the first part of s. 35 of the Evidence Act. Though it is a weak type of evidence, and standing by itself cannot be regarded sufficient to establish the holding of a public meeting by the first respondent, it can be relied upon as a corroborative piece of evidence which may be considered along with other evidence in the case. The oral evidence thug corroborated, disclosed that in addition to the 23 public meetings admitted by the first respondent, 9 further public meetings were held on big behalf at various places. The first respondent not only suppressed the expenditure on these nine additional public meetings, but, also he suppressed the real expenditure on the admitted 23 public meetings. [281G-282C, G-283A, 293A-C, 301A-B]

(b)If the Court comes to the conclusion that' an item of expenditure has been suppressed in the return of election expenses, the mere fact that there is no sufficient evidence about the amount that must have been spent is no ground for ignoring the matter. It is the duty of the Court to asses all expenses as best as it

26 1

can though the court should not enter into the region of speculation or merely try to guess the amount that must have been spent. Generally it would be possible to arrive at an amount of expenditure on a conservative basis, and where it is possible to arrive at such an estimate, such estimated amount should be held as not shown by the candidate in his election account. [300E-G]

Magraj Patodia v. R. K. Birla & Ors. [1971] 2 S.C.R. 11 8 and P. C. P. Reddiar v. S. Perumal , [1972] 2 S.C.R. 646 referred to.

(c)The first respondent owned the responsibility for expenses in respect of the 23 public meetings admitted by him. He also admitted in his evidence that he "bore the

expenses of all the election meetings in my constituency". Therefore, there is no scope for the argument that the expenses of any of these additional 9 public meetings were met by any Organisation or individual other than the first respondent. Even if the expenses of some of these nine public meetings were incurred by the District Pradesh Congress Committee or any other branch of the Congress organisation which sponsored his candidature, or by any other friend or supporter, such expenses must be held to have been authorised by the first respondent because, he knowingly took advantage of such public meetings by participating in them and consented to, or at any rate, acquiesced in such expenses. [292E-H]

(2)It is not uncommon to find that during elections, posters and handbills are printed without complying with the requirement of section 127A, and sometimes containing scandalous material about rival candidates. There should therefore be some independent semi-judicial instrumentality set up by law, which would immediately investigate, even while the election fever is on and propaganda and canvassing are in progress and the evidence is raw and fresh, how the offending handbills and posters have come into existence. [314A-D]

Rahim Khan v. Khurshid Ahmed & Ors. C.A. 816 of 1973, decided on August 8, 1974, followed.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil. Appeal No. 1549 of 1972.

Appeal from the Judgment & Order dated the 19th May, 1972 of the Delhi High Court in E.P. No. 2 of 1971.

S. N. Marwaha, A. K Marwaha and K. C. Dua, for the appellant.

M. N. Phadke, V. P. Nanda, N. S. Dass Bahl and D. N. Mishra, for respondent No. 1.

The Judgment of the Court was delivered by BHAGWATI, J.-The controversy in this appeal relates to the validity of election to the Lok Sabha from the Sadar Parliamentary Constituency in the Union Territory of Delhi. Eleven candidates originally offered themselves for election from this constituency but out of them six withdrew their candidature with the result that only five remained in the field as contesting candidates. They were the petition and respondents. Nos. 1 to 4. The petitioner was put up as a candidate by the Jan Sangh, while the candidature of the first respondent 'Was sponsored by the Congress, which at that time, on account of the split in the Organisation, was known as the ruling Congress or the new Congress. Respondents Nos. 2 to 4 were independent candidates. Though there were nominally five candidates, the real contest was between the petitioner and the first respondent. The polling took place on 5th March, 1971 and the result of the

poll was declared on 11th March, 1971. The petitioner secured 55305 votes, while the first respondent polled 98108 votes. The first respondent thus won by a large majority and was declared elected. The petitioner thereupon filed an election petition challenging the validity of the election of the first respondent on various grounds. The election petition was contested by the first respondent and, as the voluminous mass of record shows, it was fought out to a bitter and with great industry and thoroughness on both sides. Mr. Justice Andley of the Delhi High Court, who heard the election petition, found in an elaborate judgment that none of the grounds on which the election was sought to be invalidated was established and he accordingly dismissed the election petition with costs. The present appeal preferred by the petitioner impugns this judgment of Mr. Justice Andley.

The election petition was based on numerous grounds which were summarised in paragraphs and subsequently elaborated in paragraphs 12, 14, 18 to 21 and 24 to 26. The ground set out in paragraph 12 was that the elector rolls, on the basis of which the election had been held, were imperfect and defective, and that vitiated the election. Paragraph 14 alleged the invalidity of the amendment in rule 56 of the Conduct of Election Rules 1961 and paragraphs 18 and 19 challenged the validity of the election on the ground that about a Jac or more ballot papers, which had been chemically treated, were fraudulently introduced and that had materially affected the result of the election. The charge in paragraphs 20 and 21 was that the first respondent was guilty of corrupt practice, in that the first respondent, his election agent and other persons with his consent, including the first respondent, had printed and published a handbill and a poster containing statements in relation to the personal character or conduct of the petitioner which ware false and which the first respondent did not believe to be true, and which were reasonably calculated to prejudice the prospects of the petitioner's election. Paragraph 24 also charged a similar corrupt practice on the allegation that these statements were repeated by the first and the fifth respondents in public meetings as also during the course of canvassing. And lastly, it was alleged in paragraphs 25 and 26 that the first respondent had incurred or authorised expenditure in excess of the prescribed limit of Rs. 10,000 in contravention of section 77 of the Representation of the People Act, 1951. These were broadly the grounds on which the election of the first respondent was sought to be declared void by the petitioner. Though the first, second and fifth respondents filed their respective written statements, the contest was only on behalf of the first and fifth respondents. The second respondent supported the petitioner : his support was however not of much value since he did not take any active part in the petition. Respondents 3 and 4 were obviously not interested in the petition and they did not even care to appear or file any written statement. The first and fifth respondents raised in their written statements certain preliminary objections and also denied the various allegations made in the petition and contested the grounds on which the petitioner claimed to set aside the election of the first respondent. We shall deal with the contents of these written statements a little later when we examine the specific charges leveled against 26 3 the first respondent. Suffice it to state for the present that on the basis of the preliminary objections raised in the written statements, the learned Trial Judge framed four preliminary issues and they were decided by an order dated 6th August, 1971. So far as the first preliminary issue is concerned, the learned Trial Judge held that paragraphs 9, 12, 18 to 21 and 24 to 26 did not suffer from lack of concise statement of material facts, but they did not give full particulars of the allegations and he accordingly directed the petitioner to furnish further particulars with respect to paragraphs 18 to 21, 24 and 25 as specified in the schedule to the order. The second and the fourth preliminary issues do not survive for consideration : they were

decided against the petitioner and the petitioner does not challenge the decision in appeal. The third preliminary issue was decided in favour of the petitioner but it is now meaningless to discuss it because the petitioner is not pressing the ground set out in paragraphs 18 and 19 in support of the appeal.

Pursuant to the aforesaid order dated 6th August, 1971, the petitioner furnished particulars of the allegations contained in paragraphs 18 to 21, 24 and 25 by an affidavit dated 19th August, 1971. A reply to these particulars was given by the first respondent on 26th August, 1971. We shall have occasion to refer to these particulars and the reply made to them when we examine the arguments advanced on behalf of the parties.

The learned Trial Judge then framed issues on the merits by an order dated 3rd September, 1971. Issues 1 to 7 of these issues relate to the ground set out in paragraphs 18 and 19. It is not necessary to refer to them since they were decided against the petitioner by the learned Trial Judge and the correctness of this decision is not assailed on behalf of the petitioner in the present appeal. Issue 8 raised the question whether the first respondent, his election agent and other persons with the consent of the first respondent or his election agent committed the corrupt practices charged in paragraphs 20 and 21 and Issue 9 raised a similar question in regard to the corrupt practices set out in paragraph 24. The question whether the first respondent in- curred or authorised expenditure in excess of the prescribed limit of Rs. 10,000/- in contravention of section 77 as alleged in paragraph 25, was put in issue in Issue 10. Issues 11, 12 and 13 raised certain subsidiary questions but it appears from the judgment of the learned Trial Judge that they were not pressed by the learned Advocate appearing on behalf of the petitioner before the Trial Court. We need not, therefore, spend any time on these issues. The last issue was issue 14 which was directed against the fifth respondent who was alleged to have committed corrupt practices.

There was enormous oral as well as documentary evidence led on behalf of both sides. This evidence discloses certain curious and unusual features to which we shall advert in course of time, but there can be no doubt that it evidences very careful and thorough preparation of the case on either side. Not an inch of ground appears to have been conceded by one side to the other and every move in this long and bitter contest, from one side or the other, seems to have been well thought out and relentlessly pursued. The learned Trial Judge, on a consideration of the evidence presented before him, came to the conclusion that issues 8, 9 and 10 were not established by the petitioner and there was also no satisfactory proof in regard to issue 14 and accordingly, by a judgment dated 19th May, 1972 he rejected the charges of corrupt practice against the first and fifth respondents and dismissed the election petition with costs. The petitioner being aggrieved by the judgment of the learned Trial Judge preferred the present appeal under section 116 A of the Representation of the People Act, 1951.

The petitioner assailed the correctness of the judgment of the learned Trial Judge only on issues 8, 9, 10 and 14. The judgment, in so far as it related to issues 1 to 7 and 11 to 13 was accepted by the petitioner and it is, therefore, not necessary to refer to the facts in so far as they bear on, those issues. We shall confine ourselves only to such of the facts as are relevant to issues 8, 9, 10 and 14 and instead of setting them out in a narrative form before commencing discussion of the arguments,

what we propose to do is to refer to the relevant facts while discussing each particular issue. We shall.proceed in the order in which these issues were argued before us.

We first take up issue 10. The charge against the first respondent under this issue was that be incurred or authorised expenditure in excess of the prescribed limit of Rs. 10,000 in contravention of section 77 and thereby committed the corrupt practice defined in section 123(6) of the Act. Section 123 sets out various corrupt practices which have the effect of invalidating an election and one of them is the incurring or authorising the expenditure in contravention of section 77 : vide sub-section (6). Sub- section (1) of section 77 provides that "every candidate at an election shall, either by himself or by his election agent, keep a separate and correct account of all expenditure in connection with the election incurred or authorised by him or by his. election agent, between the date of publication of the notification calling the election and the date of declaration of the result thereof, both dates inclusive", while sub-section (3) says that "the total of the said expenditure shall not exceed such amount as may be prescribed." It was common ground between the parties that the expenditure prescribed for a parliamentary constituency in the Union Territory of Delhi was Rs. 10,000. The first respondent and his election agent were, therefore, prohibited by section 77 from incurring or authorising expenditure in connection with his election exceeding Rs. 10,000, and if the first respondent or his election agent incurred or authorised such expenditure in excess of Rs. 10,000, it would be a corrupt practice voiding his election under section 123(6). The question which, therefore, arises for consideration is whether the first respondent or his election agent incurred or authorised expenditure in connection with his election exceeding Rs. 10,000. Now, before we proceed to discuss the evidence bearing on this question, we must clear the ground by pointing out that not only is the incurring of excessive expenditure a corrupt practice, but also the authorising of such expenditure, and authorising may be implied as well as express. Where the authorising is express, there is no difficulty in bringing home the charge of corrupt practice against the candidate But a somewhat difficult question on facts may arise where the charge is sought to be proved against the candidate on the basis that the impliedly authorised excessive expenditure. Whether a particular expenditure was impliedly authorised by the candidate must depend on the facts and circumstances of each case as appearing from the evidence adduced before the Court. This question Would arise in a challenging form where expenditure in connection with the election is incurred, not by the candidate, but by the political party which has sponsored him or his friends and supporters. Can the limit on the expenditure be evaded by the candidate by not spending any moneys of his own but leaving it to the political party or his friends and supporters to spend an amount far in excess of tHe limit ? The object of the prevision limiting the expenditure is two- fold. In the first place, it should be open to individual or any political party, howsoever small, to be able to contest an election on a footing of equality with any other individual or political party, howsoever rich and well financed it may be, and no individual or political party should be able to secure an advantage over others by reason of its superior financial strength. It can hardly be disputed that the way elections are held in our country, money is bound to play an important part in the successful prosecution of an election campaign. Money supplies "assets for advertising and other forms of political solicitation that increases the candidate's exposure to the public." Not only can money buy advertising and canvassing facilities such as hoardings, posters, handbills, brochures etc. and all the other paraphernalia of an election campaign, but it can also provide the means for quick and speedy communications and movements and sophisticated campaign techniques and is also "a substitute

for energy" in that paid workers can be employed where volunteers are found to be insufficient. The availability of large funds does ordinarily tend to increase the number of votes a candidate will receive. If, therefore, one political party or individual has larger resources available to it than another individual or political party, the former would certainly, under the present system of conducting elections, have an advantage over the latter in the electoral process. The former would have a significantly greater opportunity for the propagation of its programme while the latter may not be able to make even an effective presentation of its views. The availability of disproportionately larger resources is also likely to lend itself to misuse or abuse for securing to the political party or individual possessed of such resources, undue advantage over other political parties or individuals. Douglas points out in his book called Ethics in Government at page 72, "if one party ever attains overwhelming superiority in money, newspaper support, and (government) patronage, it will be almost impossible, barring an economic collapse, for it ever to be defeated." This produces anti-democratic effects in that a political party or individual backed by the affluent and wealthy would be able to secure a greater representation than a political party or individual who is without any links with affluence or wealth. This would result in serious discrimination between one political party or individual and another on the basis of money power and that in its turn would mean that "some voters are denied an 'equal' voice and some candidates are denied an "equal chance". It is elementary that each and every citizen has an inalienable right to full and effective participation in the political process of the legislatures and this requires that each citizen should have equally effective voice in the election of the members of the legislatures. That is the basic requirement of the Constitution. This equal effective voice--equal opportunity of participation in the electoral process-would be denied if affluence and wealth are to tilt the scales in favour of one political party or individual as against another. The democratic process can function efficiently and effectively for the benefit of the common good and reach out the benefits of self-government to the common man only if it brings about a participatory democracy in which every man, howsoever lowly or humble he may be, should be able to participate on a footing of equality with others. Individuals with grievances, men and women with ideas and vision are the sources of any society's power to improve itself. Government by consent means that such individuals must eventually be able to find groups that will work with them and must be able to make their voices heard in these groups and no group should be insulated from competition and criticism. It is only by the maintenance of such conditions that democracy can thrive and prosper and this can be ensured only by limiting the expenditure which may be incurred in connection with elections, so that, as far as possible, no one single political party or individual can have unfair advantage over the other by reason of its larger resources and the resources available for being utilised in the electoral process are within reasonable bounds and not unduly disparate and the electoral contest becomes evenly matched. Then alone the small man will come into his own and will be able to secure proper representation in our legislative bodies. The other objective of limiting expenditure is to eliminate as far as possible, the influence of big money in the electoral process. If there were no limit on expenditure, political parties would go all out for collecting contributions and obviously the largest contributions would be from the rich and affluent who constitute but a fraction of the electorate. The pernicious influence of big money would then play a decisive role in controlling the democratic process in the country. This would inevitably lead to the worst form of political corruption and that in its wake is bound to produce other vices at all levels. This danger has been pointed out in telling words in the following passage from the notes in Harvard Law Review, Vol. 66, p. 1260:

> "A less debatable objective of regulating campaign funds is the elimination of dangerous financial pressures on elected officials. Even if contributions are not motivated by an expected return in political favours, the legislator cannot overlook the effects of his decisions on the sources of campaign funds."

It is difficult to generalise about the degree of influence which the large contributors may wield in shaping the policies and decisions of the political party which they finance. It is-widely acknowledged, however, that, at the very least, they would have easy access to the leaders and representatives of the political party. But it would be naive to suggest that the influence ends with mere access. It may safely be assumed that hardly any politicians "would consciously sell their votes" ; the result may be nearly the same, if one accepts Herbert Alexander's analysis of the subtle factors that influence a political party's actions :

> "Many politicians-who do what they honestly think is right, never realize that they are mere spokesmen for their financial supporters. A legislator can avoid a Conflict of interest by investing in government bonds, but he cannot chance the conditioning that leads him to believe that what is good for his former company or present backers is good for the country."

It is likely that some elected representatives would tend to share the views of the wealthy supporters of their political party, either because of shared background and associations, increased access or subtle influences which condition their thinking. In such event the result would be that though ostensibly the political Parties which receive such contributions may profess an ideology acceptable to the com- mon man, they would in effect and substance be representative of a certain economic class and their policies and decisions would be shaped by the interests of that economic class. It was over a hundred years ago that John Stuart Mill observed that persons of a particular class who have exclusive governmental power, even if they try to act objectively, will tend to overlook the interests of other classes, or view those interests differently. And to this natural tendency may be added the fact that office bearers and elected representatives may quite possibly be inclined, though unconsciously and imperceptibly, to espouse policies and decisions-that will attract campaign contributions from affluent individuals and groups. It was said if the electoral process in the United States of America : "Members of the Rockefeller and Du Pont families invest in the election of a Republican President because they sense that if that party takes over the White House, their interests will gain more sympathetic attention-" "The central objective of contributions is access to the power of the elected official-" "For a gift of a few hundred dollars an individual may gain, in return, the intercession of a Congressman that will get him a government contract or a tariff provision that will ultimately net him or his busi- ness tens of thousands of dollars." It is obvious that pre- election donations would be likely to operate as post- election promises resulting ultimately in the casualty of the interest of the common man, not so much ostensibly in the legislative process as in the implementation of laws and administrative or policy decisions. The small man's chance is the essence of Indian democracy and that would be stultified if large contributions from rich and affluent individuals or groups are not divorced from the electoral process. It is for this reason that our Legislators, in their wisdom, enacted a coiling on the expenditure which may legitimately be incurred in connection with an election. This background

must inform the court in the interpretation of this vital and significant provision in the election law of our country.

Now, if a candidate were to be subject to the limitation of the ceiling, but the political party sponsoring him or his friends and supporters were to be free to spend as much as they like in connection with his election, the object of imposing the coiling would be completely frustrated and the beneficent provision enacted in the interest of purity and genuineness of the democratic process would be wholly emasculated. The mischief sought to be remedied and the evil sought to be suppressed would enter the political arena with redoubled force and vitiate the political life of the country. The great democratic ideal of social, economic and political justice and equality of status and opportunity enshrined in the Preamble of our constitution would remain merely a distant dream eluding our grasp. The legislators could never have intended that what the individual candidate cannot do, the political party sponsoring him or his friends and supporters should be free to do. That is why the legislature wisely interdicted not only the incurring but also the authorising of excessive expenditure by a candi- date. When the political party sponsoring a candidate incurs expenditure in connection with his election, as distinguished from expenditure on general party propaganda, and the candidate knowingly takes advantage of it or participates in the programme or activity or fails to dis- avow the expenditure or consents to it or acquiesces in. it, would be reasonable to infer, save, in special circumstances, that he impliedly authorised the political party to incur such expenditure and he cannot escape the rigour of the ceiling by saying that he has not incurred the expenditure, but his political party has done so. A party candidate does not stand apart from his political party and if the political party does not want the candidate to incur the disqualification, it must exercise control over the expenditure which may be incurred by it directly to promote the poll prospects of the candidate. The same proposition must also hold good in case of expenditure incurred by friends and supporters directly in connection with the election of the candidate. This is the only reasonable interpretation of the provision which would carry out its object and intendment and suppress the mischief and advance the remedy by purifying our election process and ridding it of the pernicious and baneful influence of big money. This is in fact what the law in England has achieved. There, every person, on pain of criminal penalty, is, required to obtain authority from the candidate before incurring any political expenditure on his behalf. The candidate is given complete discretion in authorising expenditure upto his limit. If expenditure made with the knowledge and approval of the candidate exceeds the limit or if the candidate makes a false report of the expenditure after the election, he is subject not only to criminal penalties, but also to having his election voided. It may be contended that this would considerably inhibit the electoral campaign of political parties. But we do not think so. in the first place, a political party is free to incur any expenditure it likes on its general party propaganda though, of course, in this area also some limitative ceiling is eminently desirable coupled with filing of return of expenses and an independent machinery to investigate and take action. It is only where expenditure is incurred which can be identified with the election of a given candidate that it would be liable to be added to the expenditure of that candidate as being impliedly authorised by him. Secondly, if there is continuous community involvement in political administration punctuated by activated phases of well- discussed choice of candidates by popular participation in the process of nomination, much of unnecessary expenditure which is incurred today could be avoided. Considerable distance may not have to be traveled by candidates and supports nor hidden skeletons in political cupboards tactically

uncovered, propagandist marijuana ' skillfully administered, temptations of office strategically held out nor violent demonstrations disruptiveness attempted. The dawn-to-dawn multiple speeches and monster rallies, the flood of posters and leaflets and the organising of transport and other arrangements for large numbers would become otiose. Large campaign funds would not be able to influence the decision of the electors if the selection and election of candidates becomes people's decision by discussion and not a Hobson's choice offered by Political parties. Limiting election expenses must be part of the political process.

This view, which we are taking, does not run counter to any earlier decisions of this Court. The first decision to which we must refer in this connection is Rananjaya Singh v. Baijnath Singh & Ors.(1). There the corrupt practice charged against the elected candidate was that certain persons who were in employment of his father worked for him in connection with the election and their number exceeded the maximum number of persons who could be employed in connection with the election as specified in Sch. VI read with section 77. This charge was negatived by a Bench of five judges of this Court. The Bench held that in order to attract the inhibition of the relevant sections it was necessary that the employment of persons other than or in addition to those specified in Sch. VI should be by a candidate or his agent and since in that case, the persons who worked in connection with the election were neither employed nor paid by the elected candidate or his agent, the prohibitory requirement of section 77 read with section 123(7) was not breached. It will be seen that this decision was concerned primarily with the question whether servants of the father of the elected candidate, who worked for the elected candidate in connection with the election, were liable to be taken into account in determining whether the maximum number of persons who may be employed for payment in connection with the election were exceeded. It is no doubt true that this Court observed that no expenditure was incurred by the elected candidate over and above what was shown in his return of expenses and he could not, therefore, be said to have concealed such expenditure, but that was obviously because those persons who worked in connection with the election wore not paid by him. This Court had no occasion to consider whether the elected candidate should be said to have authorised any expenditure by knowingly taking advantage of the services of these persons, because no such argument was advanced before this Court. In fact such an argument could not plausibly be advanced because the salaries paid by the father to these persons were not for the purpose of working in connection with the election. The (1) [1955] 1 S.C.R. 671.

salaries were paid because they were servants in the regular employment of the father and it was merely at the request of the father that "they assisted the son in connection with the election which strictly speaking they were not obliged to do". This decision does not, therefore, run contrary to what we have said.

We may then refer to the decision of this Court ill Ram Dayal v. Brijraj Singh & Ors.(1) The question which arose for consideration in that case was whether certain expenditure incurred by the Maharaja of Gwalior and the Rajmata in connection with the election of Brijraj 'Singh was liable to be included in his election expenses. Shah, J., <as he then was) speaking on behalf of a )Division Bench of two judges, pointed out that in the absence of any connection between the canvassing activities carried on by the Maharaja and the Rajmata with the candidature of Brijraj Singh, it is impossible to hold that any expenditure was incurred for Briraj Singh which was liable to be

included in his election expenses. The learned Judge then proceeded to add " We agree with the High Court that under s.

77(1) only the expenditure incurred or authorised by the candidate himself or by his election agent is required to be included in the account or return of election expenses and thus expenses incurred by any other agent or person without any thing more need not be included in the account or return; as such incurring of expenditure would be purely voluntary." (Emphasis supplied) These observations would show that mere incurring or expenditure by any other person in connection with the election of a candidate, without something more, would not make it an expenditure authorised by the candidate. But if there is something more which can reasonably lend itself to the inference of implied authorisation, particularly having regard to the object and intendment of the provision limiting expenditure, the Court would readily draw such an inference because the paramount object of this provision is to bring about, as far as possible, equality in availability of resources and eliminate the corrupting influence of big money. If- is significant to note that in this case the Court proceeded to examine whether the evidence was sufficient to establish that Brijraj Singh traveled with the Maharaja in his helicopter and visited several villages for his election campaign ,and held that the evidence in this connection was not reliable. This inquiry would have been wholly unnecessary unless the Court was of the view that if Brijraj Singh could be shown to have travelled 'With the Maharaja in his helicopter and visited several villages in connection with his election campaign, that would be sufficient to invest the expenditure incurred by the Maharaja with the character of expenditure impliedly authorised by Brijraj Singh. This decision, therefore far from contradicting the view taken by us, actually supports. We find the same view taken by this Court in the subsequent decision in Magraj Patodia v. R. K. Birla & Ors.(2) There also Hegde, J., (1) [1970] 1 S.C.R. 530.

(2) [1971] 2 S.C.R. 11 8.

speaking on behalf of a Division Bench of two judges; observed;, after referring to the decisions in Rananjaya Singh v. Baijnath Singh, & Ors. (supra) and Ram Dayal v. Brijraj Singh & Ors. (supra) "This Court as well as the High Courts have taken the view that the expenses incurred by a political party to advance the prospects of the candidates put up by it, without more do not fall within s. 77." (emphasis supplied). The same view was reiterated again by a Division Bench of two judges of this Court in B. Rayagopala Rao v. N. C. Ranga.(1) The question, therefore, in cases of this kind always is whether there is someting more which may legitimately give rise to an inference of implied authorisation by a candidate. What could be that something more is indicated by us in the proposition formulated above, though we must confess that by its very nature it is not possible to Jay down the exhaustive enumeration of the circumstances in which that something more may be inferred. With these observations in regard to the scope and ambit of the provision limiting expenditure, we may now proceed to examine the facts and see whether the first respondent incurred or authorised expenditure exceeding Rs. 10,000/- in connection with his election.

The first item of expenditure which we must consider in this connection relates to expenses incurred in holding public meetings in connection with the election of the first respondent. The first respondent in the return of expenses filed by him with the District Election Officer showed three

amounts as having been spent by him in connection with his public meetings. One was an amount of Rs. 188/- paid to Tandon Tent & Furniture House for furnishings supplied for twelve public meetings held between 20th February, 1971 and 2nd March,, 1971. This expenditure was supported by the bill of Tandon Tent & Furniture House, R-25 which showed that for each of the twelve public meetings, Tandon Tent & Furniture House had supplied twenty durris, six takhats and two chaddars at an aggregate charge of Rs. 15/- per meeting. The other was an amount of Rs. 180/-, which according to the first respondent, was paid to Saini Electric Works for microphone, loudspeakers and lighting arrangements made at the same twelve public meetings. The payment of this amount was sought to be supported by the receipt of Saini Electric Works,. R-27 which showed a consolidated charge of Rs. 180/- "on account of loudspeaker and lighting arrangements for the period from 20th February, 1971 to 2nd March, 1971". The third was an amount of Rs. 440/- paid to Aggarwal Tent House for furnishings and electric equipment supplied at eleven public meetings and the bill of Aggarwal, Tent House R-26 for this amount showed that Aggarwal Tent House had supplied for each public meeting one takhat, four durries, two chandanis, one microphone and four floodlights for a total (1) A.I.R. 1971 S.C. 266.

amount of Rs. 440/- inclusive of Rs. 100/- for cartage and Rs. 40/for labour charges. The first respondent thus admitted a total number of twenty-three public meetings and according to him, the total ,expenditure at each of these public meetings was about Rs. 30/- for furnishings as well as electric equipment, the aggregate expenditure being only Rs.800/-. The petitioner challenged this figure of expendi- ture given by the first respondent and contended that in addition to twenty-three public meetings admitted by the first respondent, many more public meetings were held in connection with the election of the first respondent and much larger expenditure was incurred in each of these public meetings than what was shown by the first respondent in the bills of Tandon Tent & Furniture House and Aggarwal Tent House and the receipt of Saini Electric Works. The argument of the petitioner was that in fact the first respondent had held more than fifty public meetings and at each of these public meetings he had incurred expenditure of not less than Rs. 200/- and the expenditure incurred in these public meetings itself exceeded the prescribed limit of Rs. 10,000/-. The petitioner also urged that a huge meeting was organised by the first respondent in connection with the election of the first respondent at Idgah Road which was addressed by the Prime Minister and this meeting alone cost about Rs. 50,000/- and the ceiling of Rs. 10,000/was clearly exceeded. These contentions require a close look at the evidence led on behalf of the parties.

We will first turn to consider the number of meetings organised in connection with the election of the first respondent. The first respondent, no doubt, admitted twenty three public meetings, as indeed he was bound to do in view of the return of expenses filed by him, but he did not state at any time, until he came in the witness box after the closure of the evidence of the petitioner, as to which were these twenty three public meetings and when and where they were held. The petitioner set out in the particulars regarding paragraphs 20(2) and 24 of the petition, furnished by him pursuant to the order of the learned Trial Judge dated 6th August, 1971, the dates and places of the public meetings where the allegations contained in the poster annexure 'A' were orally repeated by the first and fifth respondents and these particulars included reference to several public meetings which did not form part of the twenty three public meetings ultimately admitted by the first respondent, and yet the first respondent did not in his reply to the particulars deny that any of these public meetings

were hold by the respondent, but merely contented himself by stating vaguely and evasively that "the correctness of the statements made against paragraph 20(2)(ii)" was denied. It is apparent that though more than twenty three public meetings were held by the first respondent the first respondent had not yet made up his mind as to which twenty three out of these public meetings he should admit. If in fact only twenty three public meetings were held and the particulars furnished by the petitioner included other public meetings, the first respondent would have promptly come out with an assertion that such and such public meetings alleged by the petitioner were not held. But he could not and did not particularise any such public meetings and deny them.

It is also significant to note that when the petitioner in a rather curious menoeuvre summoned the first respondent to produce certain documents, the first respondent stated that he did not have any list of public meetings held in connection with his election and he did not have any record showing "the places where they were held including dates, names of the speakers who addressed or were to address" such public meetings. The first respondent also stated in cross- examination that he had no record with him in support of his statement that there were twenty three public meetings. It is rather strange and difficult to believe that the first respondent should not have any record of the public meetings held by him in connection with his election. If the first respondent did not have any such record, how could he in his evidence give with any definiteness or certitude the dates and places of the twenty three public meetings admitted by him. It is apparent that the first respondent refused to produce the record of the public meetings under the pretext that he did not have any such record, because he did not at that stage, before the evidence of the petitioner was fully disclosed to him, wish to commit himself to any specific public meetings and the record, if produced, would have gone against him and showed that many more than twenty three public meetings were held by him. The non-production of the record must result in an adverse inference being drawn against the first respondent.

There is also another circumstance which deserves to be noted at this stage. The first respondent was summoned by the petitioner to produce inter alia applications for permission to hold public meetings made by him or on his behalf or for his benefit by any of his workers or election agents or other agents and in answer to this summons he stated that he did not make any such application nor was any such application made on his behalf or for his benefit by any of workers, election agents or other agents. The first respondent added that Dr. Roshan Lal made "applications for permission to the authorities as President of the Delhi Sadar District Congress Committee". it is obvious from these statements that until this time the first respondent had not thought out and formulated his defence in regard to the public meetings. The first respondent wanted to leave open an exit in case the petitioner was able to show that more than twenty three public meetings were held and he, therefore, deftly and subtly threw out a veiled suggestion implying that the public meetings were held by the Delhi Sadar District Congress Committee. This attitude of the first respondent betrays an anxiety to hold back the true facts in regard to the public meetings.

It may also be noted that even in the cross-examination of the petitioner and his witnesses, the first respondent did not put forward his case as to which were the specific public meetings held by him in connection with his election and which were not. It was only after the evidence on behalf of the petitioner was closed and the first respondent knew what exactly was the case of the petitioner, that

he for the first time in his evidence particularised twenty three specific public meetings admitted by him. This strategy was adopted obviously with the object that the twenty three public meetings named by the first respondent should fit in with the unimpeachable documentary evidence which might be produced by the petitioner and his witnesses and should not be falsified by such evidence. With these broad general observations we now turn to consider the oral and documentary evidence in regard to the public meetings of the first respondent. The first respondent in his evidence admitted the following twenty three public meetings and accepted financial responsibility for them :

1.23-2-71 Malka Ganj 12. 25-2-71Narayan Mark 2.19-2-71 Roshanara Road 13. 15-2-71Chowk Tatu Shah 3.16-2-71 Ghanta Ghar Bagichi Tatu ShahSubzi Mandi 14.18-2-71Kasab Pura 4.2-3-71Clock Tower 15.20-2-71 Chowk Bara Tooti Subzi Mandi 16.21-2-71Deputy Ganj

5. 24-2-71 Chhe Tooti in Paharganj. 17.21-2-71Telewara 6.1-3-71Chowk Chhe Tooti 18. 24-2-71 Teliwara

7. 22-2-71 Chuna Mandi 19.13-2-71Chowk Kishan Ganj

8. 19-2-71 Tel Mandl 20.1-3-71P. Block, Andha 9.2-3-71 Chowk Lachman Puri Mughal

10. 25-2-71 Katra Karim 21.16-2-71K. Block, Andba Ram Nagar Mughal 11.2-3-71Chowk Nimwala 22.23-2-71 Nagia Park Nabi Karim 23.24-2-71 In front of Birla Mills.

These were the twenty three public meetings for which, accordign to the first respondent, furnishings and electric equipment ware supplied by Tandon Tent & Furniture House, Saini Electric Works and Aggarwal Tent House. The question is whether any further meetings were held in connection with the election of the first respondent. To establish that many more public meetings than twenty three were held to promote the election prospects of the 'first respondent, the petitioner led considerable oral as well as documentary evidence.

We shall presently examine this evidence, but before we do so. it would be convenient to dispose of two objections of a preliminary nature raised on behalf of the first respondent. The first respondent urged that though the petitioner at one time contended that about forty to fifty public meetings were held in connection with the election of the first respondent, he did not adhere to this claim in the course of the arguments before the learned Trial Judge and confined his claim only to nine public meetings in addition to the twenty three public meetings admitted by the first respondent, and therefore, it was not now open to him in the present appeal to contend that any further public meetings were held by the first respondent over and above the nine claimed before the learned Trial Judge. This objection is, however, untenable because it is clear from the judgment itself that the petitioner could not have confined his claim to the nine public meetings referred to by the learned Trial Judge and the learned Trial Judge was obviously under some misapprehension when he made observation to that effect in the judgment. Out of these nine public meetings, there were six which were included in the twenty three public meetings admitted by the first respondent and if that be so, it is difficult to imagine how the petitioner could have claimed them as being in addition to these twenty three public meetings. The petitioner could not possibly have confined his claim to these

nine public meetings, when out of them, six were those which were admitted by the first respondent, and could not, therefore, be "in addition to the admitted public meetings". In fact,as the subsequent discussion in the judgment shows, the learned Trial Judge actually proceeded to consider the evidence of the police officers and the officers belonging to the CID which was led on behalf of the petitioner for the purpose of proving various other public meetings in addition to the nine referred to by the learned Trial Judge and held, on a consideration of this evidence, that none of 'these public meetings claimed by the petitioner was established. This exercise would have been wholly unnecessary if the petitioner had given up his claim in regard to these public meetings and confined his argument only to the nine public meetings referred to by the learned Trial Judge.

It was then contended by the first respondent in a last desperate attempt to thwart an inquiry by this Court into the number of public meetings, that the petitioner had given particulars of only thirty three public meetings in compliance with the order made by the learned Trial Judge dated 6th August, 1971 and it was, therefore, not open to him to claim that any further public meetings were held by the first respondent and his argument should be confined only to the thirty three public meetings specified in the particulars. This argument of the first respondent is also futile. It is clear from the particulars furnished by the petitioner pursuant to the order dated 6th August, 1971 that the particulars of thirty three public meetings were given by the petitioner under paragraphs 20(2) (ii) and 24 and not under paragraph 25 of the petition, The petitioner had alleged in paragraphs 20(2) and 24 that the allegations contained in the poster annexure 'A' were orally repeated by the first and fifth respondents at various public meetings and the petitioner was, therefore, required to give particulars of such public meetings. These particulars were given by the petitioner specifically in reference to paragraphs 20(2) and 24 and they had nothing to do with the allegations in paragraph 25. So far as paragraph 25 is concerned, the only particulars which the petitioner was required to furnish were "details of the items or heads of expenses incurred by respondent No. 1", and the petitioner accordingly gave items or heads of expenses under the heading "Paragraph 25(1) of the petition". The petitioner was not required and did not give particulars of the public meetings held by the first respondent at which expenses were incurred or authorised by the first respondent. There is nothing, therefore, in the particulars which debars the petitioner from agitating as to what was the actual' number of public meetings held by the first respondent.

-M255 Sup. CI/75 The area of Sadar Parliamentary constituency was comprised within the jurisdiction of four different police stations, namely, Roshanara Road, Pahargunj, Subzimandi and Sadar Bazar. The Station House Officers pasted at these four police stations were summoned by the petitioner to give evidence as regards the public meetings held within their respective jurisdictions. Khemraj Dutt (P.W. 1) was the first witness called on behalf of the petitioner. He was the Station House Officer at Roshanara Road police station and he deposed from the records in his possession and filed a list PW 1/1 showing that two public meetings were held by the first respondent within the jurisdiction of his police station, one at Nagia Park on 23rd February, 1971 and the other near Birla Mills compounds on 24th February, 1971. Both these public meetings are included in the twenty three public meetings admitted by the first respondent and we need not, therefore, dwell on the evidence of this witness. The next witness who gave evidence on behalf of the petitioner was Ramesh Chand, Station House Officer from Sadar Bazar Police Station (P.W. 6). He prepared from the records in his possession a list showing the public meetings held with in the jurisdiction of his police

station and filed it in court as Ex. PW 615. The entries in this list have been the subject matter of controversy between the parties and we ,shall, therefore, refer to these entries in some detail. The list was broadly in three parts. One part expressly referred to public meetings held by the New Congress, the second part to public meetings held by Jansangh and the third part which was headed "Others", to certain other public meetings. There wore nine public meetings set out in the first part as having been organised by the New Congress. The first eight were those included in the twenty three public meetings admitted by the first respondent. The ninth was a public meeting at Idgah Road which was addressed by the Prime Minister. We shall deal with the Idgah Road meeting separately as it stands in a different category by itself. We are not concerned with the public meetings held by the Jan Sangh and need not, therefore, refer to the second part. The third part was headed "Others" and in this part eight public Meetings were set out as having been held on different dates. The question which was keenly debated before us was as to what was the meaning of the heading "Others". The contention of the first respondent was, and that was a contention which found favour with the learned Trial Judge and on which large part of his judgment on this point rested, that the heading "Others" signified that the public meetings enumerated under that heading were held by individuals or political parties other than the Congress and the Jan Sangh. The Petitioner, on the other hand, urged that the heading "Others" was intended to indicate only that the public meetings referred to therein were other public meetings over and above those set out in the first and second parts and since the records did not show which were the political parties which held them, they were shown in a separate category under this particular heading. The word "Others" was not intended to convey that these public 'meetings were of others, that is of individuals or political parties other than the Congress and the Jan Sangh. We think that the meaning sought to be given by the petitioner is correct and it must be preferred to that canvassed on behalf of the first respondent. The list was admittedly prepared by Ramesh Chand and he explained in his evidence in so many terms as to what he meant by the heading "Others". He stated in his evidence, obviously referring to the public meetings set out in the third part, that "the name of the party is not mentioned against Some of the meetings". These public meetings may have been held by the Conggress or the Jan Sangh or any other individual or political party. The records from which the list was prepared did not show which were the political parties which held these public meetings and they were, therefore, classified under the heading "Others". Ramesh Chand did not say that these public meetings were held by some individuals or political parties other than the Congress and the' Jan Sangh and that is why they were included under the heading "Others" nor was any such suggestion made to him in cross-examination. The explanation given by Ramesh Chand that the names of the political parties which held these public meetings were not known and hence not mentioned in the list was not challenged on behalf of the first respondent in cross-examination and if this explanation is to be accepted, as it must be, it is apparent that these public meetings were subsumed under the heading "Others" because the records did not show which were the political parties which held them. The word "Others", meant merely "other meetings" and not meetings "of others", that is of individuals or political parties other than the Congress and the Jan Sangh. We cannot, therefore, say that merely because a particular public meeting finds a place in the third part under the heading "Others", it could not be a public meeting of the Congress. The third part would show that the public meetings there referred to were held on the dates mentioned against them, but whether these public meetings were held by the Congress or the Jan Sangh or any other individual or political party could be ascertained only from other evidence, because the records with the police did not show the names of

the political parties which held these public meetings.

The third witness from the police force summoned on behalf of the petitioner was Chaman Lal (P.W. 7) who was the Station House Officer posted at Pahargunj Police Station. This witness also prepared from the records in his possession a list showing the public meetings of the Congress held within the jurisdiction of his police station and filed it in court as Ex. PW 7/1. There were twelve public meetings shown in this list as having been held by the Congress, but out of them, three public meetings, namely, one at Chunamandi on 17th February, 1971, the other at Arakashan Road, Bagichi Alauddin on 27th February, 1971 and the third at Chowk Lachmanpur on 1st March, 1971 appeared to have been cancelled. Thus, according to this list, nine public meetings were held by the Congress within the jurisdiction of the Pahargunj Police Station. Out of these nine public meetings, seven were included in the twenty three public meetings admitted, by the first res- pondent and we need not, therefore, refer to them. That leaves for consideration two public meetings which, according to the list, were held at Multani Dhandha on 18th February, 1971 and 22nd February, 1971. So far as the public meetings at Multani Dhandha on 18th February, 1971 is concerned, the contention of the first respondent was, and that was the contention which appealed to the learned Trial Judge, that it was a meeting of T. Sohan Lal who was a Congress candidate from the adjoining Karol Bagh Parliamentary constituency and not a meeting of the first respondent. We do not think it is possible for us to hold affirmatively that this public meeting was a meeting of T. Sohan Lal. The first respondent could have easily summoned T. Sohan Lal who belonged to the same political party as he and established through his evidence that this was public meeting of T. Sohan Lal, but the first respondent failed to do so. That, however, does not help the petitioner, because the burden is on the petitioner to show that this public meeting was a meeting of the first respondent and the petitioner must discharge that burden on the evidence on record. How one fact which stands out from the evidence of Om Prakash Makkan (RI/WI) is that a part of Multani Dhandha (within the jurisdiction of Pahargunj police Station) fell within the area of the Karol Bagh Parliamentary constituency and this fact could not be controverted on behalf of the petitioner. If a part of Multani Dhandha fell within the area of the Karol Bagh Parliamentary constituency, the possibility cannot be ruled out that the public meeting of 18th February, 1971 might have been held by T. Sohan Lal in his part of Multani Dhandha in connection with his election. That in fact was the suggestion made by Om Parkash Makkan (RI/WI) in his evidence and it was repeated on behalf of the first respondent in the course of the arguments. This suggestion gains strength from the fact that amongst the speakers at this public meeting, shown in the list Ex. PW 7/ 1, was T. Sohan Lal. There was no positive evidence led on behalf of the petitioner showing that this public meeting was held in that part of Multani Dhandha which fell within the cons- tituency of the first respondent. The only evidence on which the petitioner sought to rely in this connection was that of Madan Lal Kherana (PW 10), but that evidence merely referred to a meeting of the first respondent in Multani Dhandha and, as we shall presently show, the first respondent did hold a public meeting at Multani Dhandha on 22nd February, 1971, and this evidence was obviously referable to that public meeting. The evidence on record does not, therefore, exclude the possibility that the public meeting of 18th February 1971 might have been held by T. Sohan Lal in his part of Multani Dhandha which also fell within the jurisdiction of Pahar Gun' Police Station--and we cannot hold it proved that this public meeting was a meeting of the first respondent. The petitioner, however, stands on a firmer footing in regard to the public meeting at Multani Dhandha on 22nd February, 1971. This public meeting is clearly

shown in the list as having been held as a meeting of the Congress and Ex. PW 7/3, which is a copy of the report intimating permissions granted to the Congress for holding various public meetings, shows that permission was granted for holding this public meeting. The only ground on which the learned Trial Judge rejected this public meeting was that it was shown as cancelled in the list Ex. PW 7/1. But this was an obvious error committed by the learned Trial Judge, because if we look at the list Ex. PW 7/1, it is clear that, unlike the three public meetings at Chunamandi, Arakasban Road Bagichi Alauddin and Chowk Lachmanpuri, there is no endorsement of cancellation against this public meeting and the list clearly shows that this meeting was held, but the total number of persons attending it and the names of the speakers were not known and hence not mentioned in the records. It was suggested on behalf of the first respondent in the course of arguments that this public meeting might also be of T. Sohan Lal but this suggestion is wholly untenable. In the first place, out of seven public meetings for which permissions were granted under Ex. PW 7/3, six were admittedly public meetings in connection with the election of the first respondent, and therefore, if would be reasonable to infer that the seventh public meeting at Multani Dhandha on 22nd February, 1971 must also be a public meeting of the first respondent. Secondly, it is difficult to believe that within four days of the first public meeting at Multani Dhandha on 18th February, 1971, T. Sohan Lal should have held another public meeting at the same place. It is more probable that this public meeting should have been held by the first respondent for whom this was the first and the only meeting in this area. Lastly, Madan Lal Khorana (PW 10) deposed to a public meeting of the first respondent at Multani Dhandha and this evidence was not challenged at all in cross-examination and it was not even suggested to this witness that no meeting was held by the first respondent in Multani Dhandha. We, therefore, hold, on the strength of the list PW 7/1 and the permission PW 7/3 supported by the evidence of Madan Lal Khorana (PW 10), that a public meeting was held at Multani Dhandha on 22nd February; 1971 in connection with the election of the first respondent.

Then we come to the evidence of Ram Murti Sharma (PW 8), who was the Station House Officer at Subzimandi Police Station. This witness filed a list Ex. PW 8/3 showing the public meetings held by the Congress within the jurisdiction of his police station and giving particulars of such public meetings. There were only six public meetings shown in this list and they were all included in the twenty three public meetings admitted by the first respondent. Since no further public meetings appeared to have been held by the Congress according to this list, we need not say any thing more about it. The petitioner, however, relied on a letter dated 12th February, 1971 Ex. PW 8/2 addressed by the Sub-Divisional Magistrate to Dr. Roshan Lal according permission to hold public meetings at certain places on the dates shown against them. The contention of the petitioner was that since permission was granted to Dr. Roshan Lal to hold these public meetings, they must be presumed to have been held and must be added to the twenty three public meetings admitted by the first respondent. Now, out of seven public meetings for which permission was granted by this letters four were admittedly held as shown in the list Ex. 8/3. The question is whether the other three public meetings, namely, one at 'K' Block, Andha Mughal on 18th February, 1971, the other at Malka Gunj on 22nd February, 1971 and the third at Ghanta Ghar on 3rd March, 1971 for which permission was granted, were held. We may straight away dismiss the public meeting alleged to have been held at Ghanta Ghar on 3rd March, 1971, for there is no evidence at all to show that this public meeting was held and Ram Murti Sharma (P.W. 8) actually stated in this evidence that the permission for this public meeting was cancelled by the Sub-Divisional Magistrate by his order dated 13th February,

1971. Indeed, it is difficult to see how this public meeting could possibly have been held on 3rd March, 1971 within 48 hours before the date of polling. So far as the other two public meetings, one at 'K' Block, Andha Mughal on 18th February, 1971 and other at Malka Gunj on 22nd February, 1971 are concerned, they also stand on the same footing and cannot be regarded as proved, because there is no evidence at all to show that these two public meetings were actually held pursuant to the permission granted by the Sub-Divisional Magistrate.

We may then refer to the evidence of the CID officers summoned by the petitioner to prove the holding of various public meetings by the first respondent. The first witness belonging to this group was Mahender Pal Singh (PW 20) who was an Inspector, CID Special Branch at Tees Hazari. He stated in his evidence that during the election period his staff used to cover election meetings held by various political parties and they included public meetings held by the first respondent. He further stated that the officers who were sent to cover the public meetings used to attend them and then submit, either on the basis of the shorthand notes taken down by them or from memory, reports of the speeches made at these public meetings. He was then asked to state from his records as to what were the public meetings held in the Sadar Parliamentary constituency which were covered by his staff. He, however, claimed privilege in respect of the records brought by him and produced an affidavit of the Inspector General of Police in support of his claim of privilege. The affidavit was plainly inadequate as it merely repeated the language of section 123 of the Evidence Act under which the privilege was claimed, without informing the Court as to how the records in respect of which the privilege was claimed fell within the terms of the section. The learned Trial Judge, therefore rejected the claim for privilege based on this affidavit but gave a further, opportunity to the Inspector General of Police to file a proper affidavit claiming privilege on 4th January, 1972. It appears that the Inspector General of Police was not ready with his affidavit on 4th January, 1972 and he asked for further time upto 10th January, 1972. The learned Trial Judge granted him time but made an order that the counsel for the Inspector General of Police should give to the counsel of the petitioner by 5th January, 1972 "a list of the persons who were deputed to attend the Congress election meetings in Sadar Parliamentary constituency together with their present official addresses, the dates of the meetings attended, the times of the meetings and the list of the speakers at such meetings". In compliance with this direction, a chart containing the requisite particulars prepared from the records was handed over to the counsel for the petitioner on 5th January, 1972. This chart referred to twenty two public meetings held in support of the first respondent in Sadar Parliamentary constituency and gave dates and places of these public meetings, the names of the speakers who spoke at these public meetings and the officers who covered them. The Inspector General of Police thereafter filed another affidavit dated 6th January, 1972 claiming privilege on the ground that the records contained "the mental notes and reports of officials which are made by public officers in the course of the discharge of their official duties", for the benefit of the CID Special Branch and the practice of keeping such documents was necessary for the proper information of the CID Special Branch, and the disclosure of these documents "would lead to injury to public interest and prejudice the working of the CID Special Branch. And moreover, these documents were unpublished official records relating to the affairs of the State." The learned Trial Judge, by an order dated 12th January, 1972 upheld the claim of privilege made on the strength of this affidavit. The result was that the reports made by the officers comprised inter alia the mental notes made by them,were shut out from the petitioner and a very valuable piece of evidence which

would have established beyond doubtwhat were the public meetings held by the first respondent was denied to the petitioner. There can be no doubt that these reports were made by public servants in discharge of their official duty and they were relevant under the first part of section 35 of the Evidence Act since they contained statements showing what were the public meetings held by the first respondent. Vide P. C. P. Reddiar v. S. Perumal. (1) But by reason of the order made by the learned Trial Judge upholding the claim of privilege, these reports were removed from the ken of the petitioner as well as the learned Trial Judge. The petitioner contended before us that the learned Trial Judge was in error in upholding the claim of privilege and that the reports should have been made available to the petitioner. There is great force in this contention of the petitioner because it is difficult to see-how, barring any observations or nothings made by the officers by way of comment or opinion, the rest of the reports containing factual data could possibly be regarded as privileged. The learned Trial Judge himself could have looked at the reports for the purpose of satisfying himself as to what was the nature of the statements contained in the reports and whether they were privileged, and if so, to what extent, but the learned Trial Judge apparently did not choose to do. However, it is not necessary for us to decide this question of privilege and we need not express any final opinion upon it, since we find that the officers who covered these public meetings and made reports have themselves given evidence on behalf of the petitioner and though they did suffer from the handicap that they could not refresh their memory by looking at the reports, they have given fairly reliable evidence in regard to the public meetings covered by them and the exclusion of the reports from the evidence is, therefore, really of not much consequence. Moreover, the chart furnished by the counsel for the Inspector General of Police to the petitioner gives sufficient information as to the dates and places of the public meetings held in connection with the election of the first respondent and the names of the speakers who spoke at these public meetings. The petitioner made an application to the learned Trial Judge being IA No. 645 of 1972 for taking this chart in evidence and marking it as an exhibit in the case but the learned Trial Judge, by an order dated 20th April, 1972, rejected this application. We do not think the learned Trial Judge was right in rejecting this chart out of hand as document without (1) [1972] 2 S.C.R. 646 any evidentiary value whatever. It is clear that the entries in the reports made by the officers stating the dates and places of the public meetings covered by them and the names of the speakers at those public meetings could not possibly be privileged and in fact, as appears clearly from the affidavit claiming privilege, the Inspector General of police did not claim privilege in respect of these particulars entered in the reports.The claim for privilege made by him was in respect of reports of speeches made at the public meetings since they were based on mental notes and were not "verbatim copies of the speeches of the speakers". It was for this reason that the learned Trial Judge directed that a chart showing the dates and places of the public meetings and the names of the speakers should be compiled by the Inspector General of Police and handed over to the counsel for the petitioner. This chart was obviously to be prepared from the official records in the possession of the Inspector General of Police which would be relevant under the first part of section 35 of the Evidence Act. When this direction was given by the learned Trial Judge, the first respondent did not raise any objection, though the furnishing of the chart would be clearly tantamount to production of the relevant parts of the official records containing particulars in regard to the dates and places of the public meetings and the names of the speakers. The chart furnished by the Inspector General of Police in compliance with this direction of the learned Trial Judge was, therefore, clearly admissible in evidence. The Inspector General of Police, in fact, affirmed this chart in his affidavit claiming the privilege and said

in paragraph 3 of that affidavit that the chart had been supplied to the counsel of the petitioner "through the witness Inspector Mohinder Pal Singh." It was suggested on behalf of the first respondent that there was nothing to show that this chart produced by the petitioner along with his application IA No. 645 of 1972 was the same as that given by the Inspector General of police. But this suggestion is wholly untenable. It is nothing but an afterthought. No such plea was put forward by the first respondent in reply to IA No. 645 of 1972. The first respondent did not dispute, in the affidavit filed by him in reply to this application that the chart produced by the petitioner was not the same as that handed over to him by the Inspector General of Police. The first respondent then contended that if this chart were treated as evidence, he would be deprived of an opportunity of cross-examining the CID officers who made the reports or maintained the official records from which the chart was prepared. But that is no argument, because even if the reports made by CID officers or the official , records maintained by them had been produced by the Inspector General of Police, they would have been admissible in evidence under the first part of section 35 of the Evidence Act, without any oral evidence as to their contents being required to be given by the CID officers who made the reports or maintained the official records, The petitioner is, therefore, not unjustified in asking us to treat the chart as a Piece of evidence with probative value, though it must be said that it is weak type of evidence and standing by itself without anything more, it cannot be regarded sufficient to establish the holding of a public meeting by the first respondent. It can, however, certainly be relied upon as a corroborative piece of evidence which may be considered along with other evidence for the purpose of deciding whether a particular public meeting was held in connection with election of the first respondent.

We may now turn to consider the oral evidence of the CID officers in regard to the specific public meetings held in connection with the election of the first respondent. But before we do so, we may refer to one general criticism levelled by the learned Trial Judge for disbelieving the oral evidence of the CID officers. Whenever a CID officer deposed to a public meeting hold by the first respondent, which was not to be found in the lists PW 615, PW 7/1 and PW 8/3, the learned Trial Judge promptly rejected the evidence and refused to accept the public meeting on the ground that if such a public meeting had taken place, it would have certainly found a place in one of these lists and the absence of mention of it in these lists clearly indicated that it must not have taken place,. This approach of the learned Trial Judge is in our opinion erroneous. It is obvious that the lists Ex. PW 6/5, PW 7/1 and PW 8/3 are not exhaustive of all the public meetings held within the jurisdiction of the respective police stations. They refer only to those public meetings where the police station staff was sent for maintenance of law and order. It is quite possible that there might have been other public meetings of which the police station officers had no notice and which might not have been covered by the police station staff and hence not entered in the registers maintained by the Police stations. In fact, Umesh Chandra stated in his.evidence that in February 1971, twenty four election mectingsa were held within the jurisdiction of his police station on behalf of various parties and yet the list Ex. PW 6/5 shows only eighteen public meetings. The absence of mention of a public meeting in the lists Ex. PW 6/5, PW 7/1 and PW 8/3 cannot, therefore, be a ground for disbelieving the testi- mony of an independent and disinterested witness like a CID officer. Moreover, it is difficult to appreciate how the oral testimony of a witness can be contradicted by a negative inference to be drawn from the absence of an entry in the register or list maintained by another witness, when that other witness has not stated in his evidence that his register or list was

exhaustive and no other public meetings were held It may also be noted that no question was put to any of the police station officers on behalf of the first respondent suggesting that the lists Exs. PW 615, PW 7/1 and PW 8/3 were exhaustive and no public meetings other than those shown in these lists were hold within the respective jurisdictions of their police stations. The absence of men- tion of a particular public meeting in the lists Exs. PW 615, PW 7/1 and PW 8/3 cannot, therefore, be relied upon as a circumstance for disbelieving the testimony of the CID officers in regard to the holding of such public meeting. The learned Trial Judge also relied very much on the evidence of the first respondent and his witnesses denying the holding of the public meetings deposed to by the CID officers but such denial by partisan and interested witnesses can have no meaning in the face of positive evidence of the CID officers supported by the chart furnished by the Inspector General of Police and no weight can attach to it. As observed by this Court in Rahim Khan v. Khurshid Ahmed (1):

(1) C.A. 816 of 1973, dec. on August 8, 1974.

"Negative evidence is ordinarily no good to disprove the factum of meetings."

Turning to the oral evidence of the CID officers, the first CID officer to whom we must refer in this connection is Umesh Chander (PW 39). This witness stated that he covered several election meetings in Sadar Parliamentary constituency during the General Elections of 1971 and amongst others, he attended the public meetings at Chowk Chhe Tooti, Ghanta Ghar, Tel Mandi, Amarpuri Colony, Chowk Azad Market and near Imperial Cinema. He could not give the dates of these public meetings from memory, but it is clear from the chart furnished by the Inspector General of Police to the petitioner that these six public meetings were held on 24th February, 16th February,'1971, 19th February, 1971, 25th February, 1971, 26th February, 1971 and 22nd February, 1971. Out of these six public meetings, three, namely, one at Chowk Chhe Tooti on 24th February, 1971, the other at Ghanta Ghar on 16th February, 1971 and the third at Tel Mandi on 19th February, 1971 were amongst the twenty three public meetings admitted by the first respondent. So far as the public meeting near Imperial Cinema on 22nd February, 1971 is concerned, that was also, according to the first respondent included in the admitted twenty three public meetings. The contention of the first respondent was that this public meeting was the same as the one at Chuna Mandi on 22nd February, 1971 admitted by him and was not an additional meeting. This contention appears to be well founded. It is clear from the report of permissions Ex. PW 7/3 that Imperial Cinema is in Chuna Mandi and in fact a permission was granted under Ex. PW 7/3 for holding a public meeting in Chuna Mandi in front of imperial Cinema on 17th February, 1971, though it was subsequently cancelled as appearing from the list Ex. PW 7/1. The first respondent also stated in his evidence that there was a meeting in Chuna Mandi in front of Imperial Cinema on 22nd February, 1971. The public meeting near imperial Cinema on 22nd February, 1971 deposed to by Umesh Chandra was, therefore, the same as the public meeting at Chuna Mandi admitted by the first respondent. That leaves for consideration two public meetings, one at Amarpuri Colony on 25th February, 1971 and the other at Chowk Azad Market on 26th February, 1971. Both these public meetings were disputed by the first respondent. But the evidence given by Umesh Chandra (PW 39) supported by the relevant entries in the chart shows beyond doubt that these two public meetings were hold by the first respondent. There was hardly any cross-examination of Umesh Chandra (PW 39) on this point.

No suggestion was made to him that he was an interested witness and indeed such a suggestion could not be made as he was a CID officer. It was not even put to him that these two public meetings did not take place as deposed to by him. The only question put to this witness was as to how he remembered the places of the public meetings' deposed to by him and his frank answer was that the places of these public meetings were stated by him from memory. There is no reason why this witness should be disbelieved merely because he gave the places of the public meetings attended by him from memory. In fact, as pointed out above, the chart furnished by the Inspector General of Police clearly supports his oral evidence. The learned Trial Judge rejected the evidence of this witness on two grounds. One ground was that this witness did not state that the public meetings deposed to by him were Congress meetings of the first respondent. This ground is fallacious, in that it overlooks- the positive evidence given by this witness that the first and fifth respondents spoke at these public meetings, though of course; he could not say whether both of them spoke in all the public meetings or in only some of them. Moreover, the chart furnished by the Inspector General of Police shows the names of the speakers at these public meetings and it is evident from these names that those publicmeetings were "Congress meetings of respondent No. I". The other ground relied on by the learned Trial Judge was that the claim of the petitioner in regard to the public meetings at Amarpuri colonyand Chowk Azad Market was belied by the list Ex. PW 6/5 in which, according to the learned Trial Judge, the public meetings at these two places were stated to be of political parties 'other' than the Congress or the Jan Sangh. This ground is also untenable and for two reasons. In the first place, the list Ex. PW 6/5 does not refer to any public meeting at Amarpuri Colony on 25th February, 1971 or Chowk Azad Market on 26th February, 1971 under the heading 'Others', and none of these two public meetings deposed to by Umesh Chandra (PW 39) finds a place in list Ex. PW 6/5. Secondly, as already pointed out above, the heading 'Others' does not indicate that a public meeting under that heading was a meeting of arty individual or political party other than the Congress or the Jan Sangh. We must, therefore, hold, on the strength of the evidence of Umesh Chandra (PW 39), supported by the chart furnished by the Inspector General of Police, that in addition to the twenty three public meetings admitted by the first respondent, two further public meetings were held in connection with the election of the first respondent, namely one at Amarpuri Colony on 25th February, 1971 and the other at Chowk Azad Market on 26th February, 1971. The next witness whose evidence we must consider is Ranbir Singh. (PW 49), who was at the material time a Sub-Inspector in CID Special Branch. He has stated that he covered three or four election meetings of the first respondent, and though he could not remember the sequence, he asserted that these election meetings were at Chowk Chhe Tooti, Clock Tower, Chowk Tatoo Shah Bagichi and Pahari Dhiraj. He further said that the first respondent spoke at all these- public meetings and the fifth respondent also spoke at one or two of them. He also gave the names of some of the other speakers at these four public meetings. These four public meetings also find a place in the chart furnished by the Inspector General of Police and according to that chart, the public meeting at Chowk Chhe Tooti was held on 12th February, 1971, the public meeting at Chowk Tatoo Shah Bagichi was held on 15th February, 1971, the public meeting at Clock Tower was held on 2nd March, 1971 and the public meeting at Pahari Dhiraj was held on 27th February, 1971. The second and the third of these publise meetings were included in the twenty three public meetings admitted yb the first respondent and the dispute was only as regards the first public meeting at Chowk Chhe Tooti on 12th February, 1971 and the fourth public meeting at Pahari Dhiraj on 27th February, 1971. We will first consider the position in regard to the public meeting at Pahari Dhiraj on 27th February, 1971. The learned Trial Judge

rejected the evidence of Ranbir Singh (PW 49) in regard to this public meeting on the ground that the list Ex. PW 615 showed this public meeting as " a meeting of political parties other than the Congress and the Jan Sangh" and the first respondent had in his evidence denied that any such public meeting was held by him. We do not think that the learned Trial Judge was justified in taking this view. In the first place, if we look at the list Ex. PW 615 it shows a public meeting at Pahari Dhiraj on 27th February, 1971 under the heading 'Others'. 'We have already pointed out that the heading 'Others' does not mean anything more than other meetings and merely because a particular public meeting finds a place under that heading, it does not mean that it was not a meeting of the Congress. The list Ex. PW 615 does not, therefore, in any way contradict the evidence of Ranbir Singh (PW 49) on this point. Secondly, the evidence of Ranbir Singh (PW 49) is supported by the entry at serial No. 18 in the chart furnished by the Inspector General of Police which shows that a public meeting was held in support of the first respondent at Pahari Dhiraj on 27th February, 1971 at which, amongst others, respondents Nos. 1 and 5 were the speakers. Thirdly, there is no reason why an- independent witness like Ranbir Singh (PW 49), who has absolutely no interest in the result of the litigation one way or the other should be disbelieved. It is true that the places of the four public meetings deposed to by him were mentioned in the summons served upon him and it was for that reason that he could give the names of these places in his evidence, but that does not detract from the value of his evidence, because unless these places mentioned in the summons were correct, he would not have subscribed to them in his evidence. He would have said "'I do not remember". But he gave evidence in regard to these public meetings because he remembered though his memory was prodded by what was stated in the summons. He even gave the names of some of the speakers and deposed broadly to the arrangements made at these public meetings. Not even a suggestion was made to him that the public meeting at Phari Dhiraj was a meeting of some other political party or individual. It may also be noted that apart from Ranbir Singh (PW 49), Kundanlal (PW

27) and Chunnilal (PW 32) also deposed to the public meeting at Pahari Dhiraj and there is no reason why their evidence should not be accepted, particularly when Kundanlal (PW 27) was an independent witness without any political affiliation and Chunni lal (PW 32) was also a person belonging neither to the Congress nor to the Jan Sangh. We, therefore, hold that a public meeting at Pahari Dhiraj was held in connection with the election of the first respondent on 27th February, 1971.

So far as the public meeting at Chowk Chhe Tooti on 12th February, 1971 is concerned, it is clearly established by the evidence Ranbir Singh (PW 49) supported by the entry at serial No. 1 in the chart furnished by the Inspector General of Police. It may be noted that Ranbir Singh (PW 49) stated in his evidence that the speakers, at the public meeting at Chowk Chhe Tooti were the first respondent, fifth respondent, Shiv Charan Gupta and two or three others. This statement tallies completely with the names of the speakers given in the chart furnished by the Inspector General of Police against the entry at Serial No. 1. We do not see any reason why the evidence of Ranbir Singh (PW 49), who is a wholly independent witness should be rejected and the denial of the first respondent; who is a party to the litigation or his supporters should be preferred. It is true that there is no mention of this public meeting at Chowk Chhe Tooti in the list Ex. PW 7/1, but as pointed out above, the absence of mention of this public meeting in the list Ex. PW 7/1 cannot be a ground for disbelieving the testimony of an independent and disinterested witness like Ranbir Singh (PW 49). We must,

consequently, hold that a public meeting of the first respondent was held at Chowk Chhe Tooti on 12th February, 1971.

We then go on to consider the evidence of Daulat Ram (PW

42), who was also at the material time Sub-Inspector in the CID Special Branch. He said in his evidence that he covered two election meetings of the first respondent, one at Chowk Bara Tooti and the other at Hathikhana, Bahadurgarh Road. The chart furnished by the Inspector General of Police shows that the public meeting at Chowk Bara Tooti was held on 20th February, 1971, while the public meeting at Hathikhanna, Bahadurgarh Road was held on 26th February, 1971. So far as the public meeting at Chowk Bara Tooti on 20th February, 1971 is concerned, it was admitted by the first respondent, but the public meeting at Bahadurgarh Read on 26th February, 1971 was disputed and the first respondent denied that any such public meeting was held by him. The evidence of Daulat Ram (PW 42) in regard to this public meeting is, however. very clear and there is no reason why it should not be accepted, merely because he has deposed to this public meeting from memory. In fact the memory of this witness was severely tested in cross-examination by the first respondent but he stood the test firmly and was unshaken. There is nothing suggested as to why the testimony of this witness should be rejected. This witness not only deposed to the holding of the public meeting at Bahadurgarh Road but actually gave the names of the speakers at this public meeting, namely, the first respondent, the fifth respondent, Mir Mushtaq Ahmed and Sardar Wazir Singh. These names tally completely with the names of the speakers given in the chart furnished by the Inspector General of Police. We also find that the list Ex. 6/5 shows that a public meeting at Bahadurgarh was held on 26th February, 1971. It is undoubtedly mentioned under the heading 'others' but, as we have already explained, this does not mean that it could not be a meeting of the Congress. It is significant to note that not even a suggestion was made to this witness that the public meeting at Bahadurgarh was a meeting of some other political party or individual. Such a suggestion would obviously have been futile, because the evidence of this witness was that the only meetings he covered were those of the Congress and the Jan Sangh and this public meeting political party or individual. We are, therefore, satisfied beyond doubt that a public meeting at Hathikhana, Bahadurgarh Road was held on 26th February, 1971 in connection with the election of the first respondent. The next witness in this group is Sukhbir Singh (PW 46) who was at the material time a Head Constable in CID Special Branch. He said in his evidence that he covered one meeting of the first respondent in Sadar Parliamentary constituency and that was a meeting at Chhoti Masjid, Bara Hindu Rao on 26th February, 1971. The speakers at this meeting, according to him; were O. P. Jain, Mir Mushtaq Ahmad, Narendra Kumar and Dada Ataf-ur-Rahman. This evidence clearly establishes the holding of this public meeting by the first respondent and there is no reason why it should not be accepted, particularly when we find that it has not been challenged at all in cross-examination by the first respondent. It is no doubt true that Subhash Arya (RIW 35), stated in his evidence that a public meeting was scheduled to be held at Bara Hindu Rao on 26th February, 1971, but it was cancelled because he could not arrange for any speakers at this public meeting. But we fail to see how this statement of Subhash Arya (RIW 35), who was admittedly a partisan witness, could be preferred to the testimony of Sukhbir Singh (PW 46) who was wholly independent and disinterested, having no interest in the result of the 'litigation. It may also be noted that an application Ex. PW 611 for permission to hold this public meeting was made by Dr. Roshan Lal on 26th February, 1971, that is,

on the same day on which this public meeting was to be held and it is difficult to believe that such application ,could have been made by Dr. Roshan Lal in the morning of 26th February, 1971 without making the necessary arrangements for speakers at this public meeting which was to be held the same evening, The learned Trial Judge rejected the evidence of Sukhbir Singh (PW.46) in regard to this public meeting on the ground that this public meeting was shown in the list Ex. PW 6/5 as a meeting organised by other political parties and not by the Congress. But this ground is, with the greatest respect to the learned Trial Judge, wholly mis- conceived because we do not find any reference to this public meeting in the list Ex. 6/5 even under the heading 'Others'. Not only is the evidence of this witness uncontradicted by any documentary evidence but it actually finds support from the entry at Serial No. 16 in the chart furnished by the Inspector General of Police where it is shown as a meeting held in support of the first respondent. The names of the speakers given by this witness also tally with the names set out against the entry at Serial No. 16 in the chart furnished by the Inspector General of Police. We must, therefore, accept the case of the petitioner that a public meeting at Chhoti Masjid; Bara Hindu Rao was held by the first respondent on 26th February, 1971. That takes us to the evidence of Shyam Singh (PW 45), who Was at the material time posted in the CID Special Branch. He said in his evidence that he covered two public meetings of the first respondent, one at Chowk Nabi Karim on 26th February, 1971 and the other at Chowk Neemwala in Nabi Karim on 2nd March,'1971. The second public meeting at Chowk Neemwala on 2nd March 1971 was included in the twenty three public meetings admitted by the first respondent, but the first public meeting at Chowk Nabi Karim held on 26th February, 1971 was disputed by him and the case of the first respondent was that no such public meeting was held. We do not see any reason why the evidence of Shyam Singh (PW 45) in regard to the public meeting at Chowk Nabi Karim on 26th February, 1971 should not be accepted. If we look at the cross- examination of this witness by the first respondent, we do not find any challenge at all to the statement of this witness in regard to the holding of this public meeting. Moreover, the evidence of this witness is supported by the statement of Chunni Lal (PW 32) in cross-examination that the Congress held a public meeting inter alia at Nabi Karim Chowk. But more than this support from the oral evidence of Chunni Lal (PW 32) is the corroboration to be found in the chart furnished by the Inspector General of Police. The entry at Serial No. 14 in this chart clearly supplies authenticity and veracity to the evidence of Shyam Singh (PW

45) that this public meeting did take place as claimed by the petitioner. The names of the speakers given by this witness in his oral evidence find a place amongst the speakers mentioned in this chart. There can, therefore, be no doubt despite the denial of the first respondent, that a public meeting at the Chowk near the Police Post, Nabi Karim was held by the first respondent on 26th February, 1971. The petitioner also claimed that two other public meetings were held by the first respondent in connection with his election, one at Chowk Singhara on 18th February, 1971 and the other at Tonga Stand, Pahar Gunj on 2nd March, 1971. These two public meetings are shown as having been held in support of the first respondent in the entries at Serial Nos. 4 and 21 in the chart furnished by the Inspector General of Police. The CID officer who, according to this Chart, covered these two public meetings was Umesh Chandra (PW 39) but since Umesh Chandra (PW 39) was precluded from refer ring to the reports made by him contemporaneously for the purpose of refreshing his memory and required to give evidence only on the basis of what he recalled, he omitted these two public meetings in the evidence given by him. There was also no other evidence in support of these two public

meetings. The case of the petitioner, therefore, rested only on the entries at Serial Nos. 4 and 21 in the chart supplied by the Inspector General of Police. But as pointed out above, this chart is definitely weak piece of evidence and it would not be correct to rely upon it as substantive evidence for the purpose of holding, on the strength of its evidentiary value alone without anything more, that these two public meetings, namely one at Chowk Singhara on 18th February, 1971 and the other at Tonga Stand, Pahar Gunj on 2nd March,1971 were held in support of the election of the first respondent.

Then there were three other public meetings claimed by the petitioner to havebeen held by the first respondent, namely one at Katra Karim on 17th February, 1971, the other at Chuna Mandi near Imperial Cinema on 17th February, 1971 and the third at Tel Mandi on 19th February, 1971. There is no evidence at all to show that these three public meetings were held. The only piece of evidence on which the petitioner could place reliance was the copy of the report Ex. PW 7/3 which showed the permissions granted by the Sub-Divisional Magistrate to the Congress to hold certain public meetings which included inter alia these three public meetings. But from the mere factual of permission, without any further evidence, we cannot come to the conclusion that these three public meetings were held in connection with the election of the first respondent. The same position obtains in regard to three other public meetings claimed by the petitioner, namely, one at 'K' Block, Andha Mughal on 18th February, 1971, the other at Malka Gurj on 22nd February, 1971 and the third at Ghanta Ghar on 3rd March, 1971. There is no evidence in support of these three public meetings. What we have are only the applications for permission to hold these three public meetings and they are clearly insufficient to establish that these three public meetings were held. In fact, the public meeting at Ghanta Ghar on 3rd March, 1971 could never have been held because of the ban on public meetings within forty eight hours before the date of polling.

We then proceed to consider the public meeting which, according to the petitioner, was held in Gulabi Bagh. The only evidence in support of this public meeting is a reference to it in the bill of Agarwal Tent House, Ex. R-

26. But, as we shall presently show, this bill of Agarwal Tent House cannot be regarded as genuine and it would not, therefore, be correct to base any finding on a statement contained in it. in the absence of any Positive evidence on behalf of the petitioner in support of this public meeting, the denial of the first respondent must be accepted. We, therefore, reject the case of the petitioner that a public meeting was hold by the first respondent at Gulabi Bagh. That takes us to the public meeting at Pulbangash on 26th February, 1971. Ex. PW 6/1 is the application made by Dr. Roshan Lal for permission to hold a public meeting at Chowk Pul Bangash on 26th February, 1971 and, in the absence of any evidence to the contrary, we must presume that the permission applied for was granted. The list Ex. PW 615 shows that a public meeting was held at Pul Bangash on 26th February, 1971. The reference to this public meeting is under the heading 'Others', but, as we have already discussed this circumstance does not militate against this public meeting being a meeting of the Congress Then there is the positive evidence of Inder Mohan Bharadwaj (PW 30) that there was a public meeting of the,, first respondent at Pul Bangash on 26th February, 1971 and when he was passing along, he saw pamphlets, like annexure 'A', being distributed at this public meeting. It appears that the statement of this witness in regard to the factum of this public meeting was not

challenged in cross-examination on behalf of the first respondent. The only challenge was to the accuracy of what he saw at this public meeting. When we turn to the evidence led on behalf of the first respondent in regard to this public meeting, we find a very interesting feature which is eloquent of the truth. Om Prakash Makkan (RIW 1) admitted in his cross-examination on 4th February, 1972 that he went to another meeting of the first respondent and the place whore this meeting was hold was Pul Bangash. But his cross-examination was not completed on 4th February, 1972. It was continued on 7th February, 1972 and in the course of the further cross-examination on that day, he seized the opportunity to go back on his previous admission and tried to explain it away by saying: "I did not see any meeting at Pul Bangash. I had gone there to see Tirlochan Singh. When I went there I saw 20 or 25 people coming back. I asked them whether Tirlochan Singh was there and was informed that Tirlochan Singh was not there. Amongst the people returning was my brother-in-law Dina Nath and he told me that there had been a meeting in some house". This was a crude and clumsy attempt to explain away an admission unwittingly made and it cannot deceive us. The admission of the witness stands unimpaired and there can be no doubt that it represents the truth. When Subhash Arya (RIW 35) was cross-examined in regard to this public meeting, he admitted that this public meeting was scheduled to be hold at Chowk Pul Bangash on 26th February, 1971, but it could not be hold because he was not able to arrange for any speakers. This statement of Subhash Arya (RIW35) clearly implies that the permission for holding this public meeting was obtained, but the reason for not holding it was different. We, however, find it difficult to believe that this public meeting could not be held on account of want of speakers. It is a most unconvincing explanation given by Subhash Arya (RIW 35) for the purpose of explaining away this public meeting. In fact, the list Ex. PW 6/5 clearly shows that a public meeting was held at Pul Bangash on 26th February, 1971, We are, therefore, satisfied from evidence on record that this public meeting was held in connection with the election of the first respondent.

The claim of the petitioner in regard to the public meeting said to have been hold by the first respondent at Sadar Nala Road on 15th February' 1971 is, however, not well founded. There is no evidence at all to show that this public meeting was held. The only piece of evidence on Which the petitioner could rely was the intimation Ex. PW 6/2 gives. by the Superintendent of Police, North District, Delhi to the Deputy Inspector General of Police, Delhi that the Congress had decided to hold a public meeting at Sadar Nala Road on 15th February, 1971 and assistance should be provided to the local police in maintaining Law and order. But from this piece of evidence alone, without anything more, it cannot be concluded that the public meeting referred to in this intimation was in fact hold. Subhash Arya (RIW 35) stated in his evidence that a public meeting was undoubtedly scheduled to be hold at Sadar Nala Road on 15th February, 1971, but it had to be cancelled because no arrangement could be made in regard to speakers. This statement of Subhash Arya (RIW 35) stands 1255 Sup. CI/75 uncontroverted by any positive evidence on behalf of the petitioner in regard to the holding of this public meeting, unlike the case in regard to the public meeting at Pul Bangash on 26th February, 1971. We, therefore, reject the claim of the petitioner that any such public meeting was hold at Sadar Nala Road on 15th February, 1971. We have discussed the evidence in regard to the number of public meetings held in connection with the election of the first respondent in great detail because we are taking a view different from the one taken by the learned Trial Judge and, in all fairness to the learned Trial Judge as well as to the first respondent, we think it necessary that we should articulate our reasons fully. The above discussion shows that in addition to the twenty three

public meetings admitted by the first respondent, nine further public meetings were held at the following places and on the following dates, namely

1. Amar Puri Colony on 26-2-1971

2. Chowk Azad Market on 26-2-1971

3. Chhoti Masjid, Bara Hindu Rao 26-2-1971

4. Pahari Dhiraj on 27-2-1971

5. Chhe Tooti on 12-2-1971

6. Hathi Khana, Bahadurgarh Road on 26-2-1971

7. Near Police Post, Nabi Karim on 26-2-1971

8. Multani Dhanda on. 22-2-1971

9. Pul Bangash on 26-2-1971 The first respondent owned the responsibility for expenses in respect of the twenty three public meetings admitted by him and the only question could be in regard to the expenses of the additional nine meetings above-mentioned. It was not the case of the first respondent that any public meetings were hold in connection with his election which were financed by the Congress or any other individual. The first respondent in fact admitted in his cross-examination that he "bore the expenses of all the election meetings in my constituency". There can, therefore, be no scope for the argument that the expenses of any of these nine public meetings were met by any Organisation or individual other than the first respondent. In any event, even if the expenses of some out of these nine public meetings were incurred by the District Pradesh Congress Committee or any other branch of the Congress organisation or any other friend or supporter, such expenses must be held to be authorised by the first respondent, be. cause the first respondent knowingly took advantage of such public meetings by participating in them and consented to or at any rate, acquiesced in such expenses and, in any view of the matter, failed to disavow them. The question which we must, therefore, proceed to consider is as to what were the expenses incurred or authorised by the first respondent in connection with these twenty three plus nine public meetings.

Now, the first respondent disclosed in his return of expenses only three amounts, namely, Rs. 180/-, paid to Tandon Tent and Furniture House, Rs. 180/- paid to Saini Electric Works and Rs. 440/- paid to Agarwal Tent House, and his case was that these were the only three amounts spent by him in connection with his public meetings which were twenty three in number. Since we have held that nine more public meetings were held in addition to the twenty three-admitted by the first respondent, it must follow that the first respondent suppressed the expenditure incurred or authorised by him on these nine further public meetings. What should be the approach of the Court when the Court finds that certain items of expenses are suppressed by a candidate is a matter which we shall presently discuss. But before we do that, we must examine the question whether the

expenditure shown by the first respondent in connection with twenty three public meetings admitted by him is genuine. Did the first respondent spend only three amounts of Rs. 180/-, Rs. 180/- and Rs. 440/- in connection with these public meetings or these amounts represent a very much lower figure than what was actually spent by the first respondent. The expenditure of these amounts was sought to be supported by the bill of Tandon Tent & Furniture House, the receipt of Saini Electric Works and the bill of Agarwal Tent House. The case of the first respondent was that furnishings in connection with twelve public meetings were supplied by Tandon Tent & Fur- niture House and electric equipment by Saini Electric Works and furnishings and electric equipment in connection with the remaining eleven public meetings were supplied by Agarwal Tent House. However, strangely enough, when the first respondent was asked in cross-examination, he could not say as to which were the public meetings to which Tandon Tent & Furniture House and Saini Electric Works supplied furnishings and electric equipment and which were the public meetings to which furnishings and electric equipment were supplied by Agarwal Tent House. If in fact, furnishings and electric equipment were supplied by Tandon Tent & Furniture House, Saini Electric Works and Agarwal Tent House and the arrangements with these three firms had been made personally by the first respondent, as claimed by him in his evidence, it is difficult to understand why the first respondent could not specify the public meetings catered by Tandon Tent & Furniture House and Saini Electric Works and the public meetings catered by Agarwal Tent House. Surely, the first respondent must have maintained some records to show to which public meetings furnishings and electric equipment were supplied by these three firms; otherwise, how could he have checked whether the bills submitted by these three firms were correct. The inability to produce the records and to particularise the specific public meetings catered by these three firms is a factor which throws considerable doubt on the genuineness of the story of the first respondent that furnishings and electric equipment were supplied by these three firms. It is also rather strange that the first respondent could not give particulars of the furnishings and electric equipment actually supplied by these three firms.

It may also be noted that the bill of Tandon Tent & Furniture House was sought to be proved by the first respondent by examining Bhagmal Tandon (RIW 14), the sole proprietor of that firm as a witness. But so far as the receipt of Saini Electric Works and the bill of Agarwal Tent House were concerned, the first respondent did not call any representatives of these two firms to give evidence and prove the contents of these documents. Since the correctness and genuineness of these documents was challenged on behalf of the petitioner, the. first respondent ought to have summoned the representatives of these two firms and led their evidence for the purpose of establishing that in fact they supplied furnishings and electric equipment and charged no more than the amounts shown in these documents. The first respondent, however, did not choose to do so and preferred to rest his case marely on his oral testimony which was so vague and evasive as not to give even the particulars of the specific public meetings at which furnishings and electric equipment were supplied by the different firms. It may also be pointed out that so far as Saini Electric Works is concerned, not even the bill of this firm was attempted to be produced by the first respondent. The receipt of this firm which was produced from the records of the Chief Electoral Officer- merely showed a sum of Rs. 180/- as having been received from the first respondent "on account of loudspeaker and light arrangements for the period from 20th February, 1971 to 2nd March,1971". It did not show where"loudspeaker and light arrangements" were supplied, what was the number of

public meetings at which the supply was made, how many loudspeakers were supplied and what was the nature and extent of the lighting arrangements made at each public meeting. The rate at which "loudspeaker and light arrangements" were supplied was also not mentioned in the receipt. The receipt also did not refer to supply of microphones and, therefore, presumably, microphones were not supplied by Saini Electric Works and the amount of Rs. 180/- did not cover arty charges oil. that account. The evidence of Subhash Arya (RIW 35) also exposes the in- firmities in the case of the first respondent on this point. Subhash Arya (RIW 35) in his evidence made a distinction between big public meetings and small public meetings and stated that "for big public meetings respondent No. I had instructed him to place an order with Tandon Tent House to supply furniture etc. other than electricity. Electricity material was supplied by Saini Electrical Works. For smaller public meetings the furniture etc. used to be supplied by Agarwal Tent House". These were, according to this witness, twelve big public meetings and eight out of these big public meetings, were held at Clock Tower, Bara Tooti, Chowk Neemwala, Tel Mandi, Chhe Tooti, Chuna Mandi, Kasabpura and Deputy Gunj, and the he remaining four, in Pahar Gunj. It is clear from the particulars of the twenty three public meetings admitted by the first respondent that out of the aforesaid eight big public meetings referred to by this witness, three were held prior to 20th February, 1971, one at Clock Tower on 16th February, 1971, the other at Tel Mandi on 19th February, 1971 and the third at Kasabpura on 18th February, 1971. Now, if furnishings at big public meetings were supplied by Tandon Tent & Furniture House, as claimed by Subhash Arya (RIW 35), it must follow that furnishings at these three big public meetings held at Clock also have been supplied by Tandon Tent & Furniture House. But the bill of Tandon Tent & Furniture House shows that furnishings were supplied only at "12 public meetings hold in the month 20/2/71 to 2/3/71" and no furnishings were supplied at any public meetings hold prior to 20th February, 1971. If that be so, Tandon Tent & Furniture House could not possibly have supplied furnishings at the three big public meetings hold at Clock Tower, Tel Mandi and Kasabpura prior to 20th February, 1971. This casts grave doubt on the case of the first respondent that furnishings were supplied by Tandon Tent & Furniture House at twelve public meetings held by the first respondent and irresistibly leads to the conclusion that the. bill of Tandon Tent & Furniture House is, to say the least, highly suspicious. The case of the first respondent in regard to furnishings and electrical equipment supplied by Agarwal Tent House, also suffers from the same infirmity. Agarwal Tent House, according to Subhash Arya (RIW 35), supplied furnishings and electrical equipment at smaller public meetings. The public meeting at 'P' Block, Andha Mughal on 1st March, 1971 was admittedly a small public meeting and, therefore, if the case of the first respondent were true, furnishings and electrical equipment at this public meetings should have been supplied by Agarwal Tent House. But the bill of Agarwal Tent House showed that furnishings and electrical equipment were supplied by that firm only at eleven public meetings held in the month of February, 1971. It is, therefore, obvious that, according to this bill, furnishings and electric equipment could not have been supplied by Agarwal Tent House at this public meeting held on 1st March, 1971. The bill of Agarwal Tent House thus does not fit in with the evidence and it is difficult to accept it as genuine. The only way in which the first respondent tried to get out of this rather difficult situation was by saying that the distinction made by Subhash Arya (RIW 35) between big meetings and small meetings was a distinction without a difference made under some misapprehension and this explanation appealed to the learned Trial Judge. But it is difficult to see how one could explain away this distinction in such a casual manner, when Subhash Arya (RIW

35) put forward this distinction deliberately and advisedly as part of the case of the first respondent and there was nothing in his evidence to suggest that it was made under any misapprehension.

Then,again, it may be noted that,the bill of Agarwal Tent House referred to two public meetings one at Gulabi Bagh and the other at Sadar Bazar and charged for furnishings and electric equipment said to have been supplied at these two public meetings. The first respondent, however, denied that any public meeting was held by him at Sadar Bazar and in the absence of any positive evidence to the contrary, we must accept this denial as correct. So far as the public meeting alleged to have been held at Gulabi Bagh is concerned, the first respondent at one place in his evidence disclaimed any knowledge as to where Gulabi Bagh was situate, but subsequently, in the course of his cross-examination, he unwittingly blurted out that Gulabi Bagh was at a distance of two or two and a half-miles from the shop of Agarwal Tend House, which means that he know where Gulabi Bagh was. Now, according to the list of twenty three public meetings given by the first respondent, there was no public meeting at Gulabi Bagh and yet the bill of Agarwal Tent House referred to a public meeting at Gulabi Bagh. The first respondent was, therefore, constrained to put forward a rather ingenious explanation in the course of arguments that Gulabi Bagh was in the area known as Andha Mughal and the reference in the bill of Agarwal Tent House was, therefore, to the public meeting in Andha Mughal. But this explanation is palpably incorrect, because the only two public meetings out of those admitted by the first respon- dent which took place in Andha Mughal were at 'P' Block, Andha Mughal and 'IC Block, Andha Mughal, and Gulabi Bagh, Andha Mughal is clearly and indisputably a different area from 'P' Block or 'K' Block. Andha Mughal. There was, therefore, no public meeting of the first respondent held at Gulabi Bagh. The bill of Agarwal Tent House which refers to the public meetings at Gulabi Bagh and Sadar Bazar cannot, in the circumstances, be looked upon as a document inspiring confidence and no reliance can be placed upon it. There are also certain other infirmities which stare us in the face if we examine the matter a little more closely. The bill of Agarwal Tent House showed a lump sum of Rs. 100/-for carnage charges and a lump sum of Rs. 40/- for labour charges in respect of furnishings and electrical equipment supplied at eleven public meetings held by the first respondent. That would mean that an aggregate sum of Rs. 300/was charged by Agarwal Tent House to the first respondent by way of hire for furnishings and electrical equipment and the rate of hire thus came to about Rs. 27/- per public meeting. So far as the bill of Tandon Tent & Furniture House is concerned, it did not make any separate mention of cartage or labour charges in respect of furnishings supplied at twelve public meetings of the first respondent. The explanation of the first respondent as well as Bhagmal Tandon (RIW 14), the sole proprietor of this firm, was that the rate of Rs. 15/- per public meeting mentioned in this bill was inclusive of cartage and labour charges and that is why these charges were not separately shown as in the bill of Agarwal Tent House. obviously, some such explanation had to be given by the first respondent, because no separate amount in. respect of cartage and labour charges was shown by him in his return of expenses. But that exposes completely the dubious character of the bill of Tandon Tent & Furniture House. The cartage and labour charges, according to the bill of Agarwal Tent House, were Rs. 13/- per public meeting. We will assume in favour of the first respondent that the cartage and labour charges in respect of furnishings supplied by Tandon Tent & Furniture House and the electrical equipment supplied by Saini Electrical Works were the same, namely, Rs. 13/- per public meeting, even though the furnishings supplied by Tandon Tent and Furniture House were in much greater quantity than those supplied by Agarwal Tent House. But even on that minimal

footing, the aggregate charges by way of hire for furnishings supplied by Tandon Tent & Furniture House and electric equipment supplied by Saini Electric Works would come to Rs. 17/- per public meeting. Is it not strange 2 97 and almost incradible that the hire charges for furnishings and electrical equipment supplied by Agarwal Tent House at small public meetings should be Rs. 27/- per public meeting while the hire charges for furnishings supplied by Tandon Tent & Furniture House arid electrical equipment supplied by Saini Electric Works at big public meetings should be only Rs. 17/- per public meeting. The furnishings supplied by Tandon Tent & Furniture House,were admittedly much more in quantity then those supplied by Agarwal Tent House and, therefore, the hire charges of Tandon Tent & Furniture House and Saini Electric Works should have been higher than those of Agarwal Tent House. But strangely enough they were lower by about Rs. 10/- per public meeting. It would be straining our credulity to the utmost to accept this fantastic theory. We may also point out that it is rather strange that the first respondent should have entered into arrangements with Tandon Tent & Furniture House and Agarwal Tent House to supply fixed items of furnishings, irrespective of the nature or size of the public meeting. Would the nature and quantity of the items of furnishings required at a public meeting not depend on the place or locality in which the public meeting is to be held-whether the audience expected would be large or small ? This is of course riot a circumstance on which we place much reliance but it cannot be said to be wholly without significance. Then again it may be noted that the rate of about Rs. 27/per public meeting by way of hire for furnishings and electric equip- ment supplied by Agarwal Tent House as also the rate of Rs. 15/per public meeting for furnishings supplied by Tandon Tent & Furniture House and the rate of Rs. 15/- per public meeting for electrical equipment supplied by Saini Electric Works-both the latter rates being inclusive of labour and cartage charges-are absurdly low and can hardly be regarded as genuine. It was not the case of the first respondent that the rates charged by these three firms were confessional rates. In fact, Bhagnial Tandon (RIW 14), who is the proprietor of Tandon Tent & Furniture House, stated in his evidence that the rates charged by him from the first respondent were the usual market rates. If we look at the bills Exs. PW 15/1-A, PW 15/1-B and PW 15/1-C produced by Permod Kumar (PW 15), it is clear that the market rates particularly for the supply of electrical equipment were very much higher than those shown to have been charged by these three firms.

We may then examine the evidence of Bhagmal Tandon (RIW 14), who came as a witness on behalf of the first respondent. He stated in his evidence that he did not receive any orders from the first respondent to supply furnishings during the election but it was Subhash Arya (RIW 35) who placed orders with him "to arrange for furniture for election meetings of respondent No. 1". He deposed that the bill in respect of furnishings supplied by him was submitted by him to the first respondent and he received payment of the amount of the bill against the receipt Ex. R-8. He was severely cross-examined on behalf of the petitioner and in his cross- examination, he admitted that even during the previous elections he had worked for the first respondent who had stood as a candidate on behalf of the Congress. He stated that he maintained only a bill book, a ledger and a cash book and he produced these books of account in Court. The bill book contained the carbon copies of the bills issued by the witness during the period 6th February, 1971 to 21st March, 197 1. The bill for the furnishings supplied to the first respondent bore the number 8170 and a carbon copy of it found a place in the bill book. This bill was for Rs. 180 and it was dated 4th March, 1971. There were carbon copies of bills Nos. 8167, 8168 and 8169 in the bill book which all bore the date 4th March, 1971. The

aggregate amount of these four bills, namely, Bills Nos. 8167, 8168, 8169 and 8170, came to Rs. 189.75 and this aggregate amount appeared to have been carried to the cash book and entered on the credit side under the date 4th March, 1971 at page 93 of the cash book. The particular soft his entry in the cash book showed that the amount of Rs. 189 .75 was credited as representing cash received in respect of bills Nos. 8167 to 8170. This amount of R. 189

-7 5 was then carried to the ledger at page 15 and credited in the account headed "Cash Hire in respect of Goods" under the date 4th March, 1971. Now if these entries in the cash book and the ledger are genuine, they would go a long way to support the genuineness of the bill No. 8170 said to have been submitted by Tandon Tent & Furniture House to the first respondent. But, we do not think we can, with any degree of confidence, place reliance on these entries. It is well known in bookkeeping that it is the cash book which is the primary book and the ledger is only a subsidiary book which is always prepared from the cash book at periodic intervals. We must, therefore, first examine whether the entry of Rs. 189 .75 in the cash book can be regarded as genuine. This entry in the cash book shows that the amount of Rs. 189 .75 was received in cash on 4th March, 1971 in respect of bills Nos. 8167 to 8170. That would mean that the amount of Rs. 180/- in respect of bill No. 8170 was received by Tandon Tent & Furniture House from the first respondent in cash on 4th March, 1971. But, if we look at the original bill No. 8170, we find an endorsement at the foot of that bill showing that the amount of that bill, namely, Rs. 180/-, was paid to Tandon Tent & Furniture House on 7th April, 1971. That is also borne out by the receipt R-8 dated 7th April, 1971 said to have been passed by Bhagmal Tandon (RIW 14) on behalf of Tandon Tent & Furniture House in favour of the first respondent. But, if the amount of the bill was paid by the first respondent to Tandon Tent & Furniture House on 7th April, 1971, it is difficult to see how it could be shown in the cash book as having been received on 4th March, 1971. In fact, if we look at the cash book, it is apparent, even to the naked eye, that the whole of it seems to have been written out in the same ink at one and the same time. We have in the course of our experience yet to come across a genuine cash book written with such neatness, uniformly with the same pen and in the same shade of ink over a hundred pages. We cannot place any reliance on the entry of Rs. 189.75 under date 4th March, 1971 at page 93 of the cash book and the corresponding entry at page 15 of the ledger must also likewise be regarded as unreliable. it is no doubt true that the bill book produced by Bhagmal Tandon (RIW 14) contained a carbon copy of bill No. 8170 alleged first respondent. But we are not at all satisfied about the genuineness of this bill. We have already set out some of the reasons why we find it difficult to accept this bill as genuine. We may add two or three more reasons for taking this view. In the first place, if we look at the bill book, it is evident that this is the only bill which has been made out in English. The rest of the bills are all in Urdu. Secondly, it is apparent from the receipt Ex. R-8-and this Bhagmal Tandon (RIW 14) was forced to admit in cross- examination-that the bill number originally written in that receipt was different and it was struck off and in its place bill No. 8170 was mentioned. That raises a certain amount of suspicion as to the genuineness of bill No. 8170. Then again it is rather strange that Bhagmal Tandon (RIW 14) should have no record in his possession to show which were the public meetings at which furnishings were supplied by his firm and what were the dates on which such public meetings were held. It is also surprising that bill No. 8170 submitted by him to the first respondent should not mention the dates and places of the public meetings at which furnishings were supplied by his firm. Bhagmal Tandon (RIW

14) could not even state from memory as to which were the places at which the public meetings catered by his firm were hold. He said it his evidence quite unwittingly that he used to receive chits or telephone calls "containing requirements for the election meetings of respondent No. 1". But immediately realising that he had slipped into a rather inconvenient statement he corrected himself by saying that the chits which were received me-rely indicated the places where the material had to be supplied and it had already been agreed as to what he was supposed to supply at each public meeting. When asked to produce these chits, he stated that they had not been retained by him and were destroyed as soon as the final account was made up on 4th March, 1971. It may be noted that the version of Om Prakash Makkan (RIW 1) in this connection was a little different. He did not support the story of chits, but stated that "our volunteers used to go and specify the requirement for each meeting". Then Bhagmal Tandon (RIW 14) was questioned whether any receipts Were obtained evidencing delivery of the furnishings to the representatives of the first respondent. He first blundered into the statement that he maintained copies but immediately resiled from it by saying that he maintained a bound book of printed forms and every time that a thelewala went to deliver furnishings at a public meeting, he would tear off a printed form from this bound book and give it to the thelewala to obtain the signature of the person who received the furnishings and the thelewala would bring back that printed form duly signed by such person. No copies of these printed forms of receipt were, however, maintained by him and the originals were torn off by him after the account was settled with the first respondent on 4th March, 1971. He was then cross-examined with regard to payment of carnage charges to the thelewalas. He stated that he used to pay the thelewalas at the rate of Re. 1/- or Rs. 1.50 for each one way trip and thus, accord- ing to him, the cartage charges came to about Rs. 3/- per each return trip. Since the cartage charges of Rs. 3/- per each return trip would be, a legitimate business expenditure incurred by him which he would be entitled to claim by way of deduction in his income tax assessment, he was asked whether it was recorded in his account books. But he was not in a position to show any entries in the account books relating to payment of the cartage charges and he was, therefore, constrained to say that he used to make this payment from his pocket and did not record it anywhere in his books. This is an explanation which is difficult to swallow. No business man would fail to show in his account books expenditure incurred by him in the course of his business which he can claim as a deduction in his income tax assessment. We are, therefore, not at all satisfied that furnishings were supplied by Tandem Tent & Furniture House as claimed by the first respondent and Bhagmal Tandon (RIW 14) and we cannot accept bill No. 8170 alleged to have been submitted by that firm to the first respondent as genuine.

Since, in the view taken by us, the bills of Tandon Tent & Furniture House and Agarwal Tent House and the receipt of Saini Electric Works do not appear to be genuineness and they do not correctly show the expenses incurred by the first respondent in regard to the twenty three public meetings admitted by him, it becomes necessary for us to inquire what were the expenses actually incurred by the first respondent in connection. with the twenty three public meetings admitted by him as also nine further public meetings proved to have been held in support of his election. Now, except in case of two public meetings, one at Tel Mandi on 19th February, 1971 and the other at Chuna Mandi on 22nd February 1971 no evidence was led on behalf of the petitioner to show the actual expenses incurred by the first respondent in regard to any of these public meetings. Indeed, the petitioner could not possibly lead any such evidence, because what expenses were actually incurred would be a matter within the special knowledge of the first respondent. But that does not moan that on the

material on record, the Court cannot arrive at a reasonable estimate of the expenses incurred by the first respondent. It is now well settled by the decision of this Court in Megraj Patodia v. B. K. Birla, (1) that "if the court comes to the conclusion that an item of expenditure has been suppressed in the return of election expenses, the more fact that there is no sufficient evidence about the amount that must have been spent is not ground foreign ignoring the matter. It is the duty of the court to assess all expenses as best it can and though the court should not enter into the region of speculation or merely try to guess the amount that must have been spent, it would generally be possible to arrive at an amount of expenditure oil a conservative basis and, where it is possible to arrive at any such estimate, such estimated amount should be hold as not shown by the candidate in his election account". See also P. C. P. Raddiar v. S. Perumal (2). The Court cannot fold its hands and surrender in helplessness because the respondent refuses to cooperate and assist and holds back the relevant information in his possession. The Court in such a case is not powerless to arrive at the truth as best as it can. The Court can and must, as far as possible, assess the amount of expenditure on the basis of the material on record when it finds that there is suppression of some item of expenditure or the item is deliberately shown as less than what must have actually been incurred. Here in the present case (1) [1971] 2 S.C.R.118.

(2) [1972] 2 S.C.R. 646.

the first respondent has not only suppressed the items of expenditure on nine further public meetings but also the items of expenditure on admitted twenty-three public meetings are deliberately shown at a much lesser figure than what must have actually been incurred. We must, therefore, examine whether there is sufficient material before us on the basis of which we can arrive at a reasonable estimate of the expenses incurred by the first respondent in connection with the admitted twenty-three public meetings and the further nine public meetings.

Now the material before us for estimating the expenditure which must reasonably have been incurred by the first respondent in connection with his public meetings is of two kinds; one consists of documentary evidence in the shape of Exs. PW 15/1-A, PW 15/1-B and PW 15/1-C and the other consists of oral evidence of witnesses. Since documentary evidence always carries greater weight and assurance than oral evidence and it is safer to rest a conclusion on documentary evidence rather than oral evidence which may sometimes be treacherously deceptive and difficult of correct evaluation, we would first examine the documentary evidence and see how far it helps us to determine the expenditure incurred by the first respondent. The petitioner called in evidence Permod Kumar (PW 15) and the documentary evidence in the shape of Exs. PW 15/1-A, PW 15/1-B and PW 15/1-C was produced by this witness. This witness stated in his evidence that he carried on business of hiring out furnishings and electrical equipment and in course of his business he "hired out durries, stage, loud- speakers etc. to respondent No. I during the election period". He produced from his bill book carbon copies of three bills in respect of furnishings and electrical equipment hired out by him to the first respondent. One was bill No. 263 dated 20th February, 1971 for Rs. 368/-, the other was bill No. 270 dated 24th February, 1971 for Rs. 414.50 and the third was bill No. 271 dated 24th February, 1971 for Rs. 360/- He said that one or two days before the date of the first bill, the first respondent had come to him accompanied by Sat Prakash Makkan and one other person whose name he did not remember and placed an order with him "with respect to all the three

bills" and the furnishings and electric equipment mentioned in these three bills were supplied by him according to the order placed by the first respondent and the payment of the amounts of these three bills was made to him personally by the first respondent. The copies of these three bills were marked Exs. 15/1-A, PW 15/1-B and PW 15/1-C. The first respondent challenged the genuineness of these three bills and the learned Trial Judge felt serious doubt about the authenticity of these three bills and declined to act upon them. We do not think the learned Trial Judge was right in casting doubt on the genuineness of these three bills. There is absolutely no reason why these three bills should be regarded as unworthy of credibility. Permod Kumar (PW 15) who produced and proved these three bills is a completely independent witness who has no interest in one side or the other. It was faintly suggested to him in cross-examination that he was a member of the Jan Sangh and he worked for Jan Sangh candidates in the elections but this suggestion was stoutly denied by him and in fact there is nothing to show that he was in any way interested in the Jan Sangh. It was then put to him that he was a partner of one Padamchand Goel who was a member of the Delhi Municipal Corporation on Jan Sangh ticket. He admitted that there was a partnership between him and Padamchand Goel entered into in 1966 but that partnership was dissolved within three or four months after Padamchand Goel became a member of the Delhi Municipal Corporation. It does not follow merely because an erstwhile partner of this witness was a member of the Jan Sangh, that he too should be having interest in the Jan Sangh. It would be too much to presume that a person without any political affiliation cannot have any business relationship with a member of a political party, and if there is any business relationship, it must be presumed that both belong to the same political party. In fact we find from the carbon copies of bills Nos. 296 and 297 in the bill book Ex. PW 1511 that this witness supplied material on hire even to the Youth Congress which is avowedly a Congress Organisation. There is absolutely no reason suggested why this witness should have gone to the length of fabricating false documents for the purpose of supporting the case of the petitioner. The carbon copies of the bills Exs. PW 15/1-A, PW 1611-B and PW 15/1-C find place in their proper serial order in a bound bill-book and it is indeed difficult to appreciate how they could be subsequently introduced in the bill-book unless of course the suggestion be that the whole of the bill-book was fabricated for the purpose of this case. This was, however, not the suggestion made to the witness in cross-examination. In any event we have carefully gone through the whole of the bill-book which is marked Ex. PW 15/1 and we do not find any indication in it which might betray that it is a subsequently got up bill- book. Even the bill-book for the immediately preceding period was produced by this witness and it is marked Ex. PW 15/2. That bill-book contains carbon copies of bills commencing form No. 201 and ending with No. 250 and the bill book Ex. PW 1511 starts from carbon copy of bill No. 251 and ends with carbon copy of bill No. 300. The carbon copies of the bills in both these bill-books appear to be quite natural and regular and no valid reason has been suggested as to why we should regard them with suspicion. It is no doubt true that it was elicited in the cross- examination of this witness that he did not maintain any cash-book or ledger or any other account book but that is not such an unusual circumstance as to lead us to believe that the carbon copies of the bills produced by him were not genuine. It is not at all improbable that the only record which the witness maintained was the bill-book, because by the very nature of his business, the bill-book would contain a complete record of the amount of hire received by him. The carbon copies of the bills not only show the names of the parties to whom materials are given on hire but also the dates and the particulars of the items and the hire charges in respect of the same. The witness also admitted in cross- examination that he did not maintain any receipt books but that is also not at all

unusual. One does not need to have a regular receipt book. A receipt can always be given on the bill submitted to the customer. Then some minor discrepancies were sought to be shown in the carbon copies of one or two other bills in the bill book. One was in respect of bill No.256.It was pointed out to the witness bore date 15th February, 1971, while bill No. 256 bore date 14th February, 1971 and he was asked how a latter bill could bear an earlier date than the earlier bills. The witness pointed out that was an obvious mistake and there is no doubt that it was so. It is apparent from the carbon copies of bills No. 254, 255 and 256 that bill No. 256, was in continuation of bills Nos. 264 and 265, forming part of one single bill in the name of K. K. Bajaj, and since the later two bills bore date 15th February, 1971, the former should also have been dated 15th February, 1971, but through some obvious error the date came to be mentioned as 14th February, 1971. No point can be made of this obvious mistake. Then the attention of the witness was drawn to some bills in the bill books PW 1511 and PW 15/2 which were shown as cancelled, and there was some cross-examination of the witness on this point. But we fail to see how this circumstance is of any help to the first respondent. It is clear from the bill books Exs. PW 1511 and PW 15/2 that whenever a bill was cancelled, the original as well as the carbon copy were marked "cancelled" or crossed out. Now; there is nothing unusual in cancelling a bill if it is found that there is some mistake made while writing it out. This happens sometimes even to the most careful of men and is not a. circumstance which should Le regarded in any manner as suspicious. The important thing is that the originals as well as the carbon copies of the cancelled bills are retained in the bill books. That would show the regular manner in which the bill books are maintained by the witness. There are no blank bills in the bill books PW 1511 and PW 15/2 which could have been utilised subsequently for the purpose of fabricating a bill as of an earlier date. The suggestion made in the cross-examination of course was that there were blank bills in the bill book PW 1511 and these were utilised for the purpose of making out false bills in the name of the first respondent. But this suggestions is wholly' unwarranted and is not supported 'by anything in the bill book PW 15/1 or PW 15/2. There are only three cancelled bills in the bill book PW 15/1. They are bills Nos. 253, 269 and 296. It will be seen that none of these three bills is blank. Each one of them has been made out in the name of some party or the other and then it has been cancelled. The same position obtains in regard to bills Nos. 207, 208 and 229 in bill book PW 15/2. It is apparent in the case of some of these bil's that they were cancelled because of' some mistake and then new bills were made out in the names of the same parties. Compare, for example, cancelled bill No. 229 with bill No. 231, cancelled bill No. 208 with bill No. 209 and cancelled bill' No. 253 with bill No. 254. There is no reason why any blank unuti- lised bills should have been allowed to remain in the bill books. That is not done by people who maintain their accounts in the regular course of business. Permod Kumar (PW 16) could not have anticipated on 20th February, 1971 that some blank bills might come in handy at a future point of time and he should, therefore, leave some blank bills in the bill books. It is also difficult to believe that there should have been a blank bill No. 263 and again three continuous blank bills at Nos. 269, 270 and 271. We find it impossible to accept this theory of fabrication of bills Exs. PW 15/1-A, PW 15/1-B and PW 15/1-C by utilising blank bills in the bill book Ex. PW 1611. Moreover, there is inherent evidence in these bills which indicates their genuine-

ness. The charge for a complete stage of 12' x 10' size and 5' height with chadder, durries and carpets is shown in the bill Ex. PW 15/1-A as Rs. 40/- per day. That appears to be quite reasonable compared to the ridiculously low figures given in the bills of Tandon Tent & Furniture House and Agarwal Tent House. Similarly, the charge for one "loudspeaker service with five units and double

mike with standby battery arrangements" is shown in the bill Ex. PW 15/1-A as Rs. 90/- and for one loudspeaker service with eight units and double mike with stand-by battery arrangements is shown in the bill Ex. PW 15/1-B as Rs. 120/-, while according to the bills of Agarwal Tent House and the receipt of Saini Electric Works, it would be only about Rs. 6/-, because out of Rs. 15/- shown by them, a minimum amount of Rs. 3/to Rs. 4/- would be taken up by cartage and labour charges and the hire of four flood lights at the rate of Re. 1. 50 per flood light would come to Rs. 6/-. It is possible to believe that in the year 1971 two microphones-even one, we may assume with five loudspeakers and standby battery arrangements coupled with the services of an attendant to look after the unit could be available for Rs. 6/- for a period of about four hours in the city of Delhi ? It is an insult to our intelligence to be told that the charge would be something as low as Rs. 6/- or for the matter of that, even Rs. 16/-. Then again, it may be noticed that the bills Exs. PW 15/1-A and PW 15/1-B were in respect of hire charges for the material supplied at the public meetings at Tel Mandi on 19th February, 1971 and Chuna Mandi on 22nd February, 1971. Both these public meetings were big public meetings which, according to the evidence, were attended by more than 2000 people and it is, therefore, quite reasonable to assume that a large number of durries must have been required at each of these two public meetings as mentioned in the bills Exs. PW 16/1-A and PW 15/1-B. The bill Ex. PW 16/1-C showing hire charges for sets of battery operated loudspeakers for announcing on scooter for two days is also quite natural because it is in evidence that announcements of public 'meetings were made from scooters and battery operated loudspeakers must have been utilised for the purpose. It is significant that the first respondent has not shown hiring of battery operated loudspeakers from any other party. We are, therefore, satisfied beyond doubt that the three bills Exs. PW 16/1-A, PW 15/1-B and PW 15/1-C are genuine and they correctly show the expenses incurred by the first respondent. Now the bills Exs. PW 15/1-A and PW 16/1-B serve two purposes. They not only show the actual expenses incurred by the first respondent in connection with the public meetings at Tel Mandi on 19th February, 1971 and Chuna Mandi on 22nd February, 1971, but also provide reliable material for making a reasonable estimate of the expenses which must have been incurred by the first respondent in connection with other public meetings. The actual expense in connection with the public meeting at Tel Mandi on 19th February, 1971 was Rs. 350/according to Ex. PW 1611 A and in connection with the public meeting at Chuna Mandi on 22nd February, 1971 it was Rs. 400/- as appearing from Ex.PW15/1-B. We may err on the side of conservatism and take the lesser of these two figures, namely, Rs. 360/-, as a basis for making a reasonable estimate of the expenditure in connection with other public meetings. This would mean that there must have been expenditure 3 05 of about Rs. 350/- per public meeting in connection with public meetings of the type which were held at Tel Mandi on 19th February, 1971 and Chuna Mandi; on 22nd February, 1971. These were obviously bigger meetings and for the smaller ones, the expenditure would be somewhat less and we may reasonably estimate it at Rs. 150/- per public meeting on a. most conservative basis.

This estimation is amply supported by the oral evidence in the case. We do not propose to refer to the evidence of all the witnesses examined on behalf of the petitioner on this point, because a large number of them were openly and avowedly supporters of Jan Sangh and it would not be safe to rely on their uncorroborated testimony for the purpose of founding a charge of corrupt practice against the first respondent. But there are a few witnesses whose evidence inspires confidence and we shall discuss their evidence. The first witness we must refer in this connection is Chunni Lal (PW 32). He

was himself a candidate at the election sponsored by Congress (0) and figured as respondent No. 3 in the petition. We have gone through his evidence carefully and critically and he has impressed us as a witness of truth. It may be noted that though he was a candidate at the election, he was not interested either in the Jan Sangh or in the Congress.Being a member of Congress(O),he was opposed both to the Congress and the Jan Sangh. The evidence he gave was quite restrained and he did not indulge in any exaggerated statements. His frankness and guilelessness are evident from his admission in cross- examination that he was "fond of contesting election for parliament, corporation, or metropolitan council". His pathetic statement that all his workers abandoned him "on the eve of the day of polling" is also quite eloquent of his sincerity and truthfulness. He stated in his evidence that the public meetings held by the Congress were "shandar". There used to be stage covered with curries and chandinis, loudspeakers, carpets and lights. "The stage was made attractive to attract the people". He frankly admitted that Jan Sangh meetings had also the same furnishings and electrical equipment but stated that "the Jan Sangh meetings were not so shandar" as the Congress meetings. 'He then deposed to a public meeting held by him in Bara Hindu Rao. He stated that this public meeting held by him was very small but even then, it cost him between Rs. 150/- and Rs. 200/-. We are inclined to accept this evidence as it appears to us to have a ring of truth. Now, there can be no doubt that if a small public meeting held by Chunni Lal (PW

32) cost him Rs. 150/- to Rs. 200/-, a much more 'shandar' public meeting held by the Congress would certainly cost anything more than Rs. 200/-. The estimate of Rs. 150/- per public meeting can, therefore, safely be regarded as a reasonable estimate.

We may also refer to the evidence of Dharamvir (PW 66). This witness was also an independent witness having no interest either in Jan Sangh or in Congress. When questioned in regard to his association with Jan Sangh he stated emphatically and in clear terms that he was neither a worker nor a member of the Jan Sangh. It was suggested to him that his brother Jagdish was a Secretary of a Mandal of Jan Sangh to which he replied that to his knowledge, at any rate, during the last Six Or seven years, his brother Jagdish had not been a Secretary of any Jan Sangh Mandal. He was also questioned about the political affiliation of his brother Jagdish and his answer was that he did not know whether his brother Jagdish was a member of Jan Sangh. There is nothing to show that this witness had any interest in Jan Sangh or that he belonged to the political persuasion of' Jan Sangh. His evidence cannot, therefore, be assailed on the ground that he was an interested witness. Now this witness carried on business of hiring shamyanas, furniture and marriage accessories. He stated that he attended a public meeting of the first respondent at Bara Tooti Chowk on 22nd February, 1971- the date 22nd January, 1971 given by him being an obvious mistake-and at this public meeting, he saw a stage big enough to accommodate 25 to 30 persons covered by curries, chandinis and 2 or 3 carpets, 200 durries for people to sit, two or three microphones, seven or eight loudspeakers and about 30 or 35 big flood lights. The stage, according to him-, must have been made of 24 or 30 takhats and there were three tiers, one above the other, in which these takhats were arranged. He then proceeded to give the rates of durries, carpets, chandnis, takhats, microphones and flood lights. He stated that the normal charges were Re. 1/- per takhat of the size of 6' x 3' x 13', Rs. 2/- per chandni of the size of 12' x 9' Rs. 4/- per carpet of the size of 6' x 9' 75 paise per durry of the Size of 1' X 9', Rs. 1 .50 to Rs. 2/- for each flood light and Rs. 60 or Rs. 70 for the type of make which he saw at this public meeting. He was cross-examine at length both in regard to

the furnishings which he saw at this public meeting as also in regard to the rates deposed to by him, but his evidence could not be shaken in cross-examination. He of course frankly admitted that the rates he had given were of a medium class goods which he kept in his shop and the rates of third class goods could be lower than those stated by him. But when he was shown the bill of Tandon Tent & Furniture House, he opined in no uncertain terms that the rates charged in that bill were low, though it was always open to a dealer to charge less if he so wanted. it may, however, be remembered in this connection that the evidence of Bhagmal Tandon (RIW 14) was that the rates charged by him were normal market rates. There can, therefore, be no doubt that the charges shown in the bill of Tandon Tent & Furniture House were not genuine charges but were deliberately deflated to suit the convenience of the first respondent. It may also be noted that the charge of Rs. 60-/ or Rs. 70-/ for the microphones deposed to by this witness was not at all challenged on behalf of the first respondent in cross-examination nor was the charge of Re. 1 .50 or Rs. 2-/ for each flood light. It is, therefore, apparent from the evidence of this witness that the expenditure in connection with the public meeting at Bara Tooti Chowk on 22nd February, 1971 could not have been less than Rs. 250/- and that justifies the reasonable estimate of Rs. 150/- per public meeting.

We may also refer to the evidence of O.P. Bharti (RIW 23) in this connection. This witness was summoned on behalf of the first respondent and his evidence, therefore assumes some importance. He was questioned in cross-examination in regard to what he saw at the public meeting of the first respondent at Bara Tooti Chowk which he attended. He stated that in this public meeting there was a stage 20' in length, 10' in width and 5' in height. The stage was covered by durries and chaddars. There were two microphones. There were durries on the ground in front of the stage. There were four or five flood lights on the stage and there was electric bulbs hung at three or four poles. Now, in order to make a stage of the size deposed to by this witness, it would be necessary to have at least 30 takhats of the size 6'x 3'x 1--3/4' and that would cost not less than Rs. 30/-. The cost of two microphones with loudspeakers would easily be in the neighborhood of Rs. 80/- or Rs. 90/-. Then the flood lights and electric bulbs would also cost at least Rs. 15/- even on the basis that there were only 4 or 5 floodlights and electric bulbs hanging at only 3 or 4 poles; which appears to us to be quite clearly an underestimate. There would also be expense in connection with durries and Chaddars. It is true that according to this witness; the durries in front of the stage would be at the most 20 or 25 but we are not inclined to accept this statement because in a public meeting where there are more than 2000 people, there must be many more durries than merely, 20 or 25. In fact, Daulat Ram (PW 42) who was a Sub-Inspector from the CID Special Branch, clearly stated that "there were a considerable number of durries" in the meeting at Chowk Bara Tooti. The expense in this connection cannot be less than Rs. 26/- to Rs. 30/-. And added to this would be cartage and labour charges which we may put at not less than Rs. 13/-. That would easily take the aggregate expenditure wall above Rs. 160/- even on a most minimal basis. We do not, therefore, think that we would be unjustified in accepting a conservative estimate of Rs. 150/- per public meeting.

We, therefore, hold that the petitioner has established that the first respondent incurred expenditure of Rs. 360/- on the public meeting at Tel Mandi on 19th February, 1971, Rs. 400/- on the public meeting at Chuna Mandi on 22nd February, 1971 and Rs. 350/- for two sets of battery operated loudspeakers for announcement on scooter. So far as the other thirty public meetings in connection with the election of the first respondent are concerned, we think that on a very

conservative estimate, the first respondent must be held to have incurred expenditure of Rs. 150/- per public meeting and that would make a total expenditure of Rs. 4,500/- in connection with these thirty public meetings. The aggregate expenditure incurred or authorised by the first respondent in connection with the total number of thirty two public meetings must, therefore, add up to Rs. 5,600/-. But the first respondent showed only an aggregate expenditure of Rs. 800/- in the return of expenses filed by him and that would mean that, over and above the expenditure of Rs. 800/- shown by him, he incurred or authorised further expenditure of Rs. 4,800/- on these thirty-two public meetings held in connection with his election.

That takes us to a consideration of the public meeting at Idgah Road which was addressed by the Prime Minister. So far as this public meeting is concerned, the evidence on record is not sufficient to establish that the expenses in connection with it were incurred or authorised by the first respondent. There is no reliable evidence "on behalf of the petitioner to show that this public meeting was held by 5- 5--M255Sup.CI/75 the first respondent or that it was a public meeting held specifically in connection with the election of the first respondent. The evidence does not even go so far as to say that this public meeting was held in the Sadar Bazar Parliamentary constituency from where the first respondent was a candidate. In fact, Govind Ram Varma (PW 19) admitted that the place where this public meeting was held was in Karol Bagh constituency. It also came out in evidence that this public meeting was attended both by the first respondent and T. Sohan Lal and it could not, therefore, possibly have been a public meeting exclusively in connection with the election of the first respondent. If it had been exclusively an election meeting of the first res- pondent, permission for holding it would in the ordinary course have been obtained by Dr. Roshan Lal, but Dr. Roshan Lal clearly stated in his evidence that he never applied for permission to hold this public meeting. It is true that the first respondent spent a sum of Rs. 35/for patrol for a scooter which his wife and one Miss Abrol utilised for going round asking women voters to attend this public meeting which was going to be addressed by the Prime Minister, but that does not necessarily mean that this public meeting was arranged by the first respondent or the expenses in connection with it were incurred or authorised by the first respondent. It is quite possible that even if public meeting was organised by his political party for the purpose of general party propaganda, the first respondent would make efforts to persuade persons within the area of his constituency to attend this public meeting as that would indirectly help in his election campaign. But on that account alone, without any positive evidence pointing in that direction no responsibility for incurring or authorising expenditure in connection with this public meeting could be fastened on the first respondent. The petitioner pointed out that the first respondent had been shifting his stand from time to time as to who was responsible for holding this public meeting. When Girdhari Lal Raval (PW 35) was in the witness box, a suggestion was made to him in cross-examination on behalf of the first respondent that this public meeting had been arranged by the District Congress Committee, Karol Bagh, but later on the first respondent changed his stand and came forward with the case that the Delhi Pradesh Congress Committee was responsible for this public meeting. The petitioner contended that this equivocation and uncertainty on the part of the first respondent in regard to a matter on which he, as the then Secretary of the Delhi Pradesh Congress Com- mittee, was bound to have definite information and knowledge, cast a grave doubt on the truthfulness and veracity of the first respondent when he denied his responsibility for this public meeting. There is considerable force in this criticism levelled on behalf of the petitioner. It is difficult to understand how the first respondent found himself

unable to assert definitely whether this public meeting was arranged by the District Congress Committee, Karol Bagh or the Delhi Pradesh Congress Committee. He was the secretary of the Delhi Pradesh Congress Committee and he must surely have known as to who arranged this public meeting. whether it was the District Congress Committee, Karol Bagh or the Delhi Pradesh Congress Committee. Then why did the first respondent not come out with a positive case right from the begining? This does give rise to suspicion that perhaps the 30 9 first respondent had something to hide from the Court. If in fact this public meeting was arranged by the District Congress Committee, Karol Bagh, the first respondent could have easily called the Secretary of that Committee to prove this fact. Equally, if the Delhi Pradesh Congress Committee were responsible for this public meeting, the first respondent, who was the then Secretary, could have easily produced the records of the Delhi Pradesh Congress Committee to show that the expenditure in connection with this public meeting was incurredby thatorgani- sation.In fact, the petitioner summonedC. L.Parvana,Permanent Secretary of the Delhi Pradesh Congress Committee, to produce the records in connection with this public meeting; but this witness stated that the Delhi Pradesh Congress Committee did not maintain any record of the meetings addressed by the Prime Minister. if this public meeting was arranged by the Delhi Pradesh Congress Committee and the expenditure in connection with it was incurred by that Organisation; it is difficult to believe that no record was maintained by it. We cannot escape the feeling that the record was being deliberately kept back from the court by C.L. Parvana who came on behalf of the Delhi Pradesh Congress Committee. It may also be noted that though C. L. Parvana was cited as a witness on behalf of the first respondent at serial No. 28 in the supplementary list of witnesses filed on 4th February, 1972 and he was summoned to come "with record relating to election meetings addressed by Smt. Indira Gandhi, including the meeting addressed in Idgah, Delhi", the first respondent did not call him in evidence and bring the record of the Delhi Pradesh Congress Committee relating to this public meeting before the Court. The first respondent, thus, failed to show that expenditure in connection with this public meeting was incurred by the Delhi Pradesh Congress Committee or the District Congress Committee, Karol Bagh. That, however, cannot help the petitioner because the burden is on the petitioner to establish that the expenditure in connection with this public meeting was incurred or authorised by the first respondent and of that, unfortunately for the petitioner, there is no evidence. The expenditure in connection with this public meeting at Idgah Road cannot, therefore, be attributed to the first respon- dent.

We may now consider the item of expenditure representing printing charges of hand-bills and posters paid to Sood Litho Press and the cost of paper required for the purpose of printing these hand-bills and posters. The first respondent admitted that an expenditure of Rs. 100/- was incurred by him in connection with printing of 5000 hand- bills containing appeal of the Prime Minister, by Sood Litho Press and this expenditure was shown by him in his return of expenses. The controversy, however, was whether this amount of, Rs. 100/- paid to Sood Litho Press related only to the charges for printing the handbills or it covered also the cost of paper required for the purpose. There was a 'Bill of Sood Litho Press bearing No. 798 dated 27th February, 1971 in respect of this amount of Rs. 100/- and that was filed by the first respondent with the Returning Officer along with his return of expenses. This bill was produced in Court by D. B. Bhardwaj, (PW 5) from the office of the Returning Officer in obedience to a summons obtained by the petitioner. When this bill was produced, it bore an endorsement "complete Prtg. etc." and immediately below that, another endorsement "Printing charges only", but this second endorsement appeared scored out. The first

respondent did not offer any explanation in his examination-in-chief as to how and in what circumstances the second endorsement "Printing charges only" was scored out. In fact, he did not say anything in his examination-in-chief in regard to this bill of Sood Litho Press. It was only in cross-examination that he stated for the first time that the charges mentioned in this bill included the cost of apaper. He was, however, constrained to admit that it was not stated in this bill in so many words that the charges included the cost of paper. But he relied on the word "etc". in the first endorsement " complete prtg. etc." and contended that this word suggested that the charges not only related to printing but also covered the cost of paper and it was for this reason that the second endorsement '.Printing charges only" was scored off as inappropriate. When it was put to him in cross- examination that the second endorsement "Printing charges only" was scored off by him after he had received the bill; he denied the suggestion and stated that the bill came with this endorsement scored off. The case of the first respondent, therefore, was that the second endorsement "Printing charges only" was scored off at the time when the bill was issued by Sood Litho Press. But this case was put forward for the first time in the cross-examination of the first respondent. When Taurus Farber (PW2), the Manager of Sood Lithe Press, was in the witness box, no suggestion was made to him that when he issued this bill; he scored out the second endorsement "Printing charges only". Taufiq Farooqi had brought the Bill Book of Sood Litho Press for the relevant period and he stated in his evidence that he found from a copy of this bill which was in the Bill Book that the bill was "in respect of 500 hand-bills-appeal of Smt. Indira Gandhi, Complete prtg. charges only at the rate of Rs. 20/- per 1000 for Rs. 100/-." This statement of Taufiq Farooqi was not challenged on behalf of the first respondent in cross-examination and it must, therefore, be accepted that the copy of this bill in the Bill Book contained the second endorsement 'Printing charges only" and it was not scored off. Now it is difficult to believe that when Taufiq Farooqi issued this bill, he should have cancelled the second endorsement Printing charges only" on the original of this bill, but left it unscarred off in the carbon copy. In fact no such suggestion was made to Taufiq Farooqi. It was not so stated even by a single witness of the first respondent. No explanation was offered in the evidence led on behalf of the first respondent unrevealing the mystery surrounding the scoring off of the second endorsement "Printing charges only". On this state of the evidence, the conclusion is irresistible that when this bill was issued by Sood Litho Press; it bore the second endorsement "Printing charges only" as did the carbon COPY produced by Taufiq Farooqi and this second endorsement was scored off at some subsequent stage. This conclusion is strengthened and fortified by the fact-that the link of the line scoring the second endorsement "Printing charges only" is of a different shade than the ink of the words in the second endorsement. Then again, there is a very important circumstance which shows beyond doubt that the second endorsement "Printing charges only" was scored off at some subsequent stage after the issue of the bill. This circumstance constitutes a rather disturbing and disquieting feature of the case. The original bill was admittedly filed by the first respondent with the Returning Officer along with his return of expenses. Before it was produced by D.B. Bhardwaj (PW 5), the petitioner applied inter alia for a certified copy of this bill and he got a certified copy of 16th June, 1971 which showed the second endorsement "Printing charges only" intact without any scoring. The inference is, therefore, inevitable that on 16th June 1971 when a certified copy was issued by the office of the Returning Officer. the original bill contained the second endorsement "Printing charges only" and this second endorsement was not scored off. But when the first respondent obtained a certified copy on 3rd August, 1971, this certified copy did not contain the second endorsement at all, which would mean that in the original bill it was

scored off. There can, therefore, be no doubt that the second endorsement "Printing charges only" in the original bill was scored off sometime between 16th June, 1971 and 3rd August, 1971 when the original bill was in the office of the Returning Officer. We are not concerned to inquire as to who was responsible for this un-authorised scoring off of the second endorsement. That would be a matter for the Returning officer or other appropriate election authorities to investigate and determine. But we cannot help mentioning that the scoring off of the second endorsement was certainly advantageous to the first respondent. The first respondent contended that the second endorsement limiting the amount of the bill to printing charges only was inappropriate, since the word ` etc'. in the first endorsement suggested that the amount of the bill covered not only printing charges but also the cost of paper, but this contention is also futile. it is difficult to see how the first endorsement complete printing etc."can possibly be construedas including the cost of paper.. It was precisely in order to stave off such an argument as this that the second endorsement "Printing charges only" was made in the bill when it was issued by Sood Litho Press. It may denoted and this is a very important circumstance-that when Taufiq Forooqi was in the witness box, no question was put to him on behalf of the first respondent requiring him to explain what he meant by the word ,etc' and suggesting that this word was intended to include the cost of paper. There is also another circumstance which strongly militates against the contention of the first respondent. If the cost of paper were included in the bill, it would have been shown as a separate item and sales tax would have been charged on it as in the case of the bill of Kapur Printing Press R18 and the estimate given by Premchand Grover R6. The absence of sales tax in the bill is a clear indication that the cost of paper was not included in the amount of the bill. We are, therefore, of the view that the amount of Rs. 100/- shown in the bill represented only printing charges and did not include the cost of paper. The cost of paper utilised in printing 5000 hand-bills containing the appeal of the Prime Minister would, therefore, have to be added to the election expenses of the first respondent.

Now this item of cost of paper was suppressed by the first respondent and we would, therefore, have to make a reasonable estimate of the expenditure incurred on it on the basis of the material on record. There is, fortunately for the petitioner, evidence on this point which enables us to make a reasonable estimate of the cost of paper which must have been utilised in printing these 5000 hand-bills. Babu Ram Sharma (PWl 1) stated in his evidence that Sarvadeshik Press, of which he was in employee, printed 8000 hand-bills containing the appeal of the Prime Minister for the first respondent and these hard-bills were like the document marked A/13 which, as deposed to by Taufiq Farooqi, was similar to the hand-bills printed by Sood Litho Press. According to Babu Ram Sharma, four reams were utilised by Sarvadeshik Press for printing 8000 hand-bills like A/ 1 3 and the cost of paper utilised for this purpose was Rs. 30/- per ream. Now, if four reams were utilised for printing 8000 pamphlets; it must follow a fortiorari that the printing of 5000 pamphlets must have required at least two and a half reams and, according to the price given,by Babu Ram Sharma, the cost of these two and a half reams of paper would be Rs. 75/-. It is true that Babu Ram Sharma was a witness who was summoned primarily to depose to the printing of various pamphlets and hand bills by Sarvadeshik Press for the first respondent and his evidence on that point was ser- iously challenged on behalf of the first respondent, but so far as the quantity of paper required for the purpose of printing hand bills like A/13 and the price of such paper were concerned, his evidence was not at all challenged in cross-examination. We can, therefore, safely estimate the cost of paper utilised in printing 5000 hand-bills by Sood Litho Press at Rs. 75/-, being the price of two and a half

reams of parer at the rate of Rs. 30/- per ream. We must now refer to the second bill of Sood Litho Press which was disputed by the first respondent. Taufiq Farooqi produced in his examination-in-chicf a copy of bill No. 785 dated 18th February, 1971 in the name of "Shri Amar Nath Chawla through Shri J.P. Gool" for Rs-54/- in respect of printing charges of posters, hand bill and kitabat. The copy of this bill, which was marked Ex. PW 2/1, carried at the foot of it an endorsement, namely, "Printing charges only" and according to the evidence given by Taufiq Farooqi, it bore his initial-S. Taufiq Farooqi admitted that the printing work covered by this bill was undertaken by Sood Litho Press on behalf of the first respondent, but, in an attempt to support the first respondent, he started by saying, almost at the commencement of his examination-in- chief, that he did not know the first respondent, though there was no provocation to him to do so. We are not prepared to accept his statement that he did not know the first respondent. It is apparent from his evidence that he was out to favour the first respondent. The petitioner in fact apprehended this situation and he, therefore, obtained from this witness an affidavit dated 17th August, 1971 and in this affidavit the witness stated on oath that "the originals of Annexures 'A' and 'B' mentioned in the election petition and attached to the same were printed through us with our print line Shri Amar Nath Chawla accompanied by Shri J. P. Goel had given me the orders for printing the said annexures and the manuscript/subject-matter was handed over to me by the said Amar Nath Chawla". When confronted with this affidavit,. he had to% admit that it bore his signatures on both pages but came out with art explanation that his affidavit had been brought to him by some Aryasamaji boys headed by Mahinder Kumar Shastri and they forced him to sign this affidavit and he accordingly signed it and gave it to Mahinder Kumar Shastri. This explanation is, to say the least, puerile. It is difficult to believe that this witness should have been forced to, sign this affidavit by some Arya Samaji boys headed by Mahinder Kumar Shastri. He does not say what was the force used by these persons and why he could not resist the use of this force and succumbed to it. He was, according to his statement in evidence, forced to put his signature on this affidavit in his press. But if that were true, he would have surely shouted for help because the shop of Sood Litho Press is situate on the main road and there are quite a few other shops adjoining to it. Moreover, he would have immediately complained to his employer Krishan Avtar Agarwal, the proprietor of Sood Litho Press, and also lodged a complaint with the police, or at any rate addressed a notice to Mahinder Kumar Shastri, but admittedly he "did not take any action or make any report to my proprietor or anybody else that I have been forced to sign this affidavit". This is most unnatural and clearly exposes the hollowness of the explanation given by the witness. We have no doubt that this affidavit was made by the witness voluntarily and he knew the first respondent as well as the fifth respondent but deliberately feigned ignorance in order to support the case of the first respondent. it is, therefore, clear from the evidence of this witness that Sood Litho Press carried out printing work for the first , respondent as shown in the Bill Ex. PW 2/1. There is no reason to doubt his testimony on this point. If at all he could, he would have tried to help the first respondent, but, obviously. there being documentary evidence in the shape of Ex. PW 2/1, in his Bill Book, he was helpless and he had to depose to it. The learned Trial Judge refused to rely on the copy of bill Ex. PW 2/1 on the ground that Taufiq Farooqi, who produced it, was an unreliable witness. But he was clearly in error in adopting this approach because, in the first place, the copy of the bill Ex. PW 2/1 was, documentary evidence which did not depend for its, validity and authenticity on the oral evidence of Taufiq Farooqi, and secondly, Taufiq Farooqi turned against the petitioner and tried to help the first respondent, and therefore,. any evidence given by him against the first respondent could not be

regarded with-suspicion, but was, on the contrary, more credible. It may be noted-and this is almost a conclusive, circumstances -that there was no cross-examination of Taufiq Farooqi in regard to the copy of the Bill Ex. PW 2/1. His evidence on this point was not at all challenged in cross-examination on behalf of the first respondent. It was not even suggested to him that the first respondent did not got printing work done by Sood Litho Press as shown in the copy of the bill Ex. PW 2/1 or that the copy of the bill Ex. PW 2/1 was false and fabricated. The only question put to Taufiq Parooqi was whether any declaration was taken by him from any one in connection with the printing of the hand-bills and posters forming the. subject-matter of the copy of the bill Ex. PW 2/1 and his answer was in the negative. But that is far from a challenge to the printing work shown in the copy of the bill Ex PW 2/1. Merely because no declaration was taken by good Litho Press from any one in connection with this printing work, it does not necessarily follow that no printing work was done by them. It is riot uncommon to find that during elections posters and hand bills are printed without complying with the requirement of section 127A. The reason is, as pointed out by this Court in Rahim Khan v. Khurshid Ahmed & Ors. (1), that "there is no agency of the law which takes prompt action after due investigation, with the result that no printer or candidate or other propagandist 'during elections bothers about the law and he is able successfully to spread scandal without a trace of the source, knowing that nothing will happen until long after the election, when in a burden-some litigation this question is raised". We may emphasise once agair that there should be some independent semi-judicial instrumentality set up by law, which would immediately investigate, even while the election fever is on and propaganda and canvassing are in progress and the evidence is raw and fresh how the offending hand bills and posters have come into existence, who has printed them and who is responsible for getting them printed for "violations thrive where prompt check is unavailable". As the evidence, goes, there being no challenge to the authenticity of the copy of the bill Ex. PW 2/1 and to the testimony of Taufiq Farooqi on this point, we must accept the case of the petitioner that the first respondent got printing work done as shown in the copy of the bill Ex PW 2/1 and incurred an expenditure of Rs. 54/- for that purpose.

But as the endorsement on the copy of the bill Ex. PW 2/1 shows, this expenditure of Rs. 54/- was only in connection with the printing charges. The cost of the paper utilised for the purpose of printing would also have to be added in determining the expenditure incurred or authorised by the first respondent. Now it is evident from the copy of the bill Ex. PW 2/1 that the total number of posters printed was 3700. Taufiq Farooqi did not state in his evidence as to what were these posters printed by his firm and denied that they were the same as the poster Annexure 'B' to the petition. But the poster Annexure 'B' to the petition clearly ,bears the print-line of Sood Litho Press and since the first respondent refused to disclose to the Court what were the posters which were got printed by him from Sood Litho Press, we would not be unjustified in holding that the posters which were printed by Sood Litho Press for the first respondent were the same as Annexure 'B' to the petition. Babu Ram Sharma (PW II) stated in his evidence that for printing posters of the size of Annexure B' to the petition, two reams of paper 1000 would be required and the price of paper utilised in the poster Annexure 'B' to the petition was Rs. 50/- per ream at the relevant time. To the same effect was also the evidence of Chater Sain (PW 55). There was no cross-examination of either of these two witnesses on this point as regards quantity and price of paper. We must, therefore, (1) C. A. No. 816 of 1973-dec. on August 8, 1974.

accept this evidence and on the basis of this evidence, we can safely conclude that the total cost of paper utilised in printing 3700 Posters was Rs. 375/- The hand bills shown to have been printed in the copy of the bill Ex. PW 2/1 were 2000 and again, for the same reasons, we do not think we would be wrong in taking the view that they were the same as the hand bill Annexure 'A' to the petition, because Annexure 'A' to the petition bears the print-line of Sood Litho Press and the first respondent suppressed from the Court information as to what were the hand bills printed by Sood Litho Press for him. Babu Ram Sharma (PW 11) stated that half ream would be required for printing 1000 hand bills of the size of Annexure 'A' to the petition and the price of paper used for Annexure 'A was Rs. 30/- per ream at the relevant time and this statement was supported by the evidence of Chater Sain (PW 22). The cost of paper utilised in printing 2000 hand bills would, therefore, be Rs. 30/-. Thus, the aggregate cost of paper utilised in printing poster and hand bills as shown in the copy of the bill Ex. PW 2/1 would come to Rs. 405/- but we may take it at Rs. 300/- on a very conservative basis.

We must, therefore, add to the expenditure incurred by the first respondent, Rs. 75/- being the cost of paper utilised in printing 5000 hand bills shown in the admitted bill of Sood Litho Press, Rs. 54/being the amount of the bill of Sood Litho Press of which the copy is exhibited as PW 2/1 and Rs. 300/- being the cost of paper utilised for printing 3700 posters and 2000 hand bills shown in the copy of the bill Ex. PW 2/1.

It would thus be seen that the total expenditure proved to have been incurred or authorised by the first respondent, in addition to that shown by him in his return of expenses, adds up to Rs. 4,800/-+ Rs. 75+Rs. 54+Rs. 300/-, making in the aggregate Rs. 5,229. Now admittedly the expenditure shown by the first respondent in his return of expenses was Rs. 5,415 .62. If the further expenditure of Rs. 5229/- is added to this admitted expenditure of Rs. 5,415. 62, the total expenditure proved to have been incurred or authorised by the first respondent comes to Rs. 10,644. 62, and that would be clearly in excess of Rs. 10,000/- which is the prescribed limit. That would be sufficient to invalidate the election of the first respondent on the ground of corrupt practice defined in section 123(6) of the Act.

On this view it is unnecessary for us to consider the other items of expenditure alleged to have been incurred or authorised by the first respondent and we do not, therefore, propose to discuss them, particularly as they are of a debatable character. We also do not think it necessary to discuss issues 8 and 9 relating to publication of Annexures 'A' and 'B' to the petition and oral repetitions of the allegations contained in Annexure'A' and'B'to the petition at various public meetings set out in the particulars supplied by the petitioner. There can be no doubt that the allegations contained in Annexure 'A' and 'B' to the De- tition related to the personal character of the petitioner and they were reasonably calculated to prejudice the prospects of his election, but it is a highly controversial question whether they were published by the first respondent or his election agent by bringing out Annexure A' and 'B' to the petition or orally at the public meetings and we do not propose to express any opinion on it. It may be noted that the learned Trial Judge found, on a consideration of the evidence, that the allegations contained in Annexure 'A'and 'B'to the petition were true but this finding was seriously attacked on behalf of the petitioner and it was contended that there was no evidence at all on the basis of which the learned Trial Judge could arrive at such a finding. There is

prima facie considerable force in this contention of the petitioner, because the finding of the learned Trial Judge that these allegations were true appears to be based primarily on the reports of the proceedings in the Parliament which are no proof of the contents of the allegations made in the course of such proceedings and it does seem to be a little difficult to sustain it. However, as pointed out above, it is not necessary to examine the correctness of this finding and to pronounce upon it.

Since we are of the view that the first respondent is guilty of the corrupt practice set out in section 123(6) of the Act, we allow the appeal and set aside the election of the first respondent. The first respondent will pay to the petitioner costs throughout.

V.P.S, Appeal A11owed.