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of Assam. Proceedings by way of *certiorari* are "not of Course". (Vide Halsbury's 'Laws of England', Hailsham Edition, Vol. 9, para. 1480 and 1481, pp. 877-878). The High Court of Assam had the power to refuse the writs if it was satisfied that there was no failure of justice, and in these appeals which are directed against the orders of the High Court in applications under Art. 226, we could refuse to interfere unless we are satisfied that the justice of the case requires it. But we are not so satisfied. We are of opinion that, having regard to the merits which have been concurrently found in favour of the respondents both by the Deputy Commissioner, Sibsagar, and the High Court, we should decline to interfere.

This being the point of substance which has been decided in favour of the respondents, we are of the opinion that the appeals are liable to be dismissed. We accordingly dismiss them but having regard to the particular circumstances which we have adverted to before, we order that each party will bear and pay its own costs of these appeals.

*Appeal dismissed.*

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*December 21*

## HARISH CHANDRA BAJPAI

*v.*

## TRILOKI SINGH

(BHAGWATI, VENKATARAMA AYYAR, B. P. SINHA and S. K. DAS JJ.)

*Election Dispute—Petition grounded on corrupt practices—'Matter', if of wider import than 'particulars'—'Trial', meaning of—'Procedure', if includes 'powers'—Amendment, if and when permissible—Power of Election Tribunal—Person, when can be said to be employed for purposes of election—Contract of service and contract for services—Distinction—Representation of the People Act (XLIII of 1951), ss. 81, 83, cls. (1), (2) & (3), 90(2), 92, 123 cls. (7) & (8)—Code of Civil Procedure (Act V of 1908), O. VI, r. 17.*

The respondent filed a petition under s. 81 of the Representation of the People Act challenging the election of the appellants to the Uttar Pradesh Legislative Assembly on the ground that they had committed corrupt practices, the material allegations

being, (1) that the appellants "could in the furtherance of their election enlist the support of cetain Government servants", and (2) that the appellant No. 1 had employed two persons in excess of the prescribed number for his election purposes. No list of particulars of corrupt practices under s. 83(2) of the Act was attached to the petition. Thereafter the respondent applied under s. 83(3) of the Act for an amendment of his petition by adding the names of certain village Headmen (Mukhias) as having worked for the appellants and later on become their polling agents. The Election Tribunal allowed the amendment, when a fresh petition on those allegations would have been time-barred, holding that what were sought to be introduced by it were mere particulars of the charge already made, and held that corrupt practices under ss. 123(8) and 123(7) had been committed by the appellants. It accordingly declared the election void under s. 100(2) (b) of the Act. It was contended on behalf of the appellants that the Election Tribunal had no power either under s. 83(3) of the Act or under O. VI, r. 17 of the Code of Civil Procedure to allow the amendment in question and its finding that the appellant No. 1 had employed the two persons in addition to the prescribed number was misconceived in law.

*Held,* that although the term 'matter' in s. 83(3) was of wider import than 'particulars' to be stated under s. 83(2) and would comprehend the grounds on which the election was sought to be set aside, s. 83(3) was not an exhaustive provision on the power of amendment, its application being limited to allegations of corrupt and illegal practices, and that, therefore, in respect of other matters, the power of amendment under O. VI, r. 17, read with s. 90(2) of the Act was not excluded, and the maximum *expressio unius exclusio alterius,* would not apply.

The word 'trial' in s. 90(2) of the Act is used in wide sense as including the entire proceedings before the Tribunal from the time when the petition is transferred to it under s. 86 of the Act till the pronouncement of its award.

There is no antithesis between 'procedure' in s. 90(2) and 'powers' in s. 92 of the Act and where an application would lie to the Tribunal under s. 90(2) it would have the power to pass the necessary order on it.

The object of the legislature in enacting s. 92 of the Act was to place the powers of the Tribunal in respect of the matters mentioned therein as distinguished from the other provisions of the Code, on a higher footing.

*Sitaram* v. *Yograjsing,* A.I.R. (1953) Bom. 293, approved.

*Jagan Nath* v. *Jaswant Singh,* (1954) S.C.R. 892, referred to.

*Sheo Mahadeo Prasad* v. *Deva Sharan,* A. I. R. (1955) Patna 81, disapproved.

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While the Election Tribunal had undoubtedly the power under s. 83(3) of the Act to allow an amendment in respect of any particulars of illegal and corrupt practices, or to permit new instances to be included, provided the grounds or charges were specifically stated in the petition, its power to amend a petition under O. VI, r. 17 of the Code of Civil Procedure could not be exercised so as to permit new grounds or charges to be raised or the character of the petition to be so altered as to make it in substance a new petition, when a fresh petition on those allegations would be time-barred.

*Beal* v. *Smith,* (1869) L. R. 4 C. P. 145 ; *Greenock Election Case,* (1869) L. R. 4 C. P. 150 (footnote) ; *Carrickfergus Case* (1869) 1 O'M. & H. 264 ; *Dublin Case,* (1869) 1 O'M. & H. 270 and *Maude* v. *Lowely,* (1874) L. R. 9 C. P. 165, referred to.

*Charan Das.* v. *Amir Khan,* (1920) L. R. 47 I. A. 255, not followed.

*Held* further, that the amendment introduced a new charge, altered the character of the petition and was beyond the powers of the Tribunal and necessary evidence had not been adduced to support a finding as to the additional employment and no corrupt practices either under cl. (7) or (8) of s. 123 had, therefore, been committed.

In deciding the question as to whether any person in addition to the number permitted by the Act had been employed by a candidate for his election purposes, the well-established distinction between a contract for services and a contract of service must be borne in mind and in absence of any evidence to support a finding as to the additional employment and no service,—that he was to do the work personally, with or without the assistance of others, he could not be held to have been employed in law.

*Collins* v. *Hertfordshire Central Council,* (1947) K. B. 598 and *Dharangadhara Chemical Works Ltd.* v. *State of Saurashtra,* (1957) S. C. R. 152, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 333 of 1956.

Appeal by special leave against the judgment and order dated March 23, 1955, of the Election Tribunal, Lucknow, in Election Petition No. 320 of 1952.

*C. K. Daphtary, Solicitor-General of India, R. C. Gupta, J. S. Trivedi* and *S. S. Shukla,* for the appellant.

*K. S. Krishnaswamy Iyengar, S. P. Sinha* and *R. Patnaik,* for respondent No. 1.

1956. December 21. The Judgment of the Court was delivered by

VENKATARAMA AIYAR J.—This is an appeal by special leave against the order of the Election Tribunal, Faizabad, declaring the election of the appellants to the Legislative Assembly, Uttar Pradesh from the Lucknow Central Constituency, void under s. 100(2)(b) of the Representation of the People Act No. XLIII of 1951, hereinafter referred to as the Act. The Constituency is a double-member Constituency, one of the seats being reserved for a member of the Scheduled Castes. The polling took place on 31-1-1952, and the two appellants were declared elected, they having secured the largest number of votes. On June 10, 1952, the respondent herein filed a petition under s. 81 of the Act alleging that the appellants had committed a number of corrupt practices, and prayed that the election might be declared wholly void.

The appellants filed written statements denying these allegations, and on the pleadings, issues were framed on January, 17, 1953. Then followed quite a spate of proceedings, consisting of applications for framing of fresh issues, for better particulars and for amendment of the election petition, to which a more detailed reference will presently be made. As a result of these proceedings, it was not until September, 1954, that the hearing of the petition began. On March 23, 1955, the Tribunal delivered its judgment and, by a majority, it set aside the election on two grounds, (1) that the appellants had obtained the assistance of four village officers, Mukhias, in furtherance of their election prospects and had thereby contravened s. 123(8) of the Act; and (2) that the first appellant had employed for payment in connection with his election two persons in addition to the number permitted by Rule 118 read with Schedule VI, namely, Ganga Prasad and Viswanath Pande, and had thereby infringed s. 123(7) of the Act. Before us, the appellants dispute the correctness of the conclusions on both these points.

As regards the first point, the main contention of the appellants is that the charge that they had employed

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four Mukhias in furtherance of their election prospects was not pleaded in the petition as originally presented, and that it came in only by an amendment dated November 28, 1953, that the Tribunal had no power to order that amendment, and that, accordingly, the finding thereon should be disregarded. It is necessary for a correct appreciation of the contentions on either side to state the facts leading to this amendment.

The material allegations in the petition as it was presented on June 10, 1952, are contained in para. 7(c), and are as follows :

"That the respondents Nos. 1 and 2 could in furtherance of their election enlist the support of certain Government servants. The District Magistrate, Lucknow, organised the opening of eye relief camps, and these functions were utilised for the election propaganda of the respondents Nos. 1 and 2. An eye relief camp was proposed to be opened on December 16, 1951, at Kakori by Sri C. B. Gupta, Minister, Civil Supplies, U.P., one of the chief organisers of the election of the respondents Nos. 1 and 2. An election meeting was advertised by the workers of the respondents Nos. 1 and 2 to be held within a short distance of the proposed eye relief camp on the same day. This meeting was amongst others addressed by Sri G. B. Pant, Chief Minister, U.P., Sri C. B. Gupta and the respondent No. 1. It was also attended by the Patwaris and Qanungo of the Kakori Circle including the Tahsildar, Lucknow and the Deputy Superintendent of Police, Lucknow.

On December 27, 1951, an eye relief camp was similarly organised and opened at Kakori. The ceremony this time was performed by Mrs. Vijay Lakshmi Pandit and immediately thereafter from the same platform and at the same place election speeches were made and the audience exhorted to vote for Mrs. Vijay Lakshmi Pandit, a candidate for the House of the People from that area and respondents Nos. 1 and 2. This meeting was attended by the District Magistrate, Lucknow, Sub Divisional Magistrate, Lucknow, Deputy Superintendent of Police, Lucknow,

Tahsildar, Lucknow and Patwaris and Qanungo of Kakori Circle. The respondents Nos. 1 and 2 by this device succeeded in creating an impression on the voters that they had the support of the district officials."

There was no list of particulars attached to the petition as provided in s. 83(2) of the Act.

On December 15, 1952, the first appellant filed his written statement, and therein he stated with reference to para 7(c) that it was "wrong and denied that the answering respondent in furtherance of his election enlisted the support of any government servant." He also stated that the allegations were not accompanied by a list, and were vague and lacking in particulars and were liable to be struck off. The written statement of the second appellant filed on December 20, 1952, was also on the same lines as those of the first appellant. Respondent No. 4, who was a defeated candidate and supported the respondent herein, filed a written statement on December 3, 1952, wherein he alleged that the appellants had obtained services of village officers, such as Lambardars and Sarpanches in furtherance of their election prospects. Respondent No. 9 who was another defeated candidate also filed a written statement on the same day, adopting the allegations in the statement of the fourth respondent adding Mukhias to the list of village officials whose assistance was procured by the appellants. On January 10, 1953, the respondent filed a replication to the written statements of the appellants, wherein he stated as follows :

"As stated in the petition, the denial of the respondents Nos. 1 and 2 is absolutely wrong, inasmuch as many Government servants worked for, issued appeals and became polling agents for respondents 1 and 2. In these meetings at Kakori many government servants took part and some worked for furtherance of the election of respondents Nos. 1 and 2 and issued appeals to the public to vote for respondents Nos. 1 and 2 and also became their polling agents."

On January 24, 1953, the appellants filed a written statement objecting to the reception of the replication

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on the ground that the petitioner (respondent) had no right to file it and that it was a mere device to add to the original petition. They also filed an application on the same date for a preliminary hearing of certain issues relating to the contentions raised by them in their written statements that the allegations in the petition were vague and should be struck off for want of particulars, and the same was posted for hearing on February 25, 1953. Arguments were heard on these issues on that day and again on August 25, 1953, and the following days, and on October 31, 1953, the Tribunal passed an order striking off some of the allegations in the petition and calling upon the petitioner to give particulars in respect of others. Dealing with para 7(c) of the petition, the order stated :

"Paragraph 7(C) is not vague. It shall remain as it is. Corresponding paragraph of the replication introduces some new matters. Therefore, the same shall be disregarded. The Petitioner has not named the Government servants. He shall supply the names of the officials including those of the Patwaris and Qanungoes."

Meantime, after the preliminary argument aforesaid had commenced and before it was concluded, the respondent filed on February 27, 1953, an application for amendment of his petition, the order on which is the main target of attack in this appeal. It was presented under s. 83(3) of the Act, and prayed that the petitioner "be allowed to amend the details of para 7(c) by adding the words 'Village Headmen' with their names and the fact that they worked and issued appeal and subsequently they became the polling agents of respondents Nos. 1 and 2." It mentioned for the first time the names of the Mukhias whose assistance the appellants have been held to have obtained. This application was opposed by the appellants on the ground that the amendment did not fall within s. 83(3), that the matters sought to be introduced thereby were new charges, and if admitted, they would alter the very character of the petition, and that it should not be granted, as a fresh petition on those allegations would be barred on that date. It should be mentioned

that on January 22, 1953, respondent No. 4 had filed an application to raise additional issues on his averments that the appellants had obtained assistance from the village officers. That application was also contested by the appellants. It would appear that this application and the amendment petition were heard together. On November 10, 1953, the Tribunal by a majority passed an order dismissing the application of the fourth respondent for additional issues. On November 28, 1953, it allowed, again by a majority, the application of the respondent for amendment observing that the matters sought to be introduced were merely particulars in respect of the charge set out in para 7(c) of the petition, "that the respondents 1 and 2 could in furtherance of their election enlist the support of certain Government servants", and further that O. VI, r. 17 of the Civil Procedure Code was applicable to proceedings before the Election Tribunal.

The appellants attack the correctness of this conclusion, and contend that the Tribunal had no power either under s. 83(3) or under O. VI, r. 17 to order the amendment in question. They also contend that even if the Tribunal had the power to order amendment, the order in question is not justified on the merits, and is erroneous. It is necessary to set out the statutory provisions bearing on the question :

"S. 81(1). An election petition calling in question any election may be presented on one or more grounds specified in sub-ss. (1) and (2) of s. 100 and s. 101 to the Election Commission by any candidate at such election or any elector in such form and within such time but not earlier than the date of publication of the name or names of the returned candidate or candidates at such election under s. 67, as may be prescribed.

S. 83(1). An election petition shall contain a concise statement of the material facts on which the petitioner relies and shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (Act V of 1908), for the verification of pleadings.

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(2) The petition shall be accompanied by a list signed and verified in like manner setting forth full particulars of any corrupt or illegal practice which the petitioner alleges, including as full a statement as possible as to the names of the parties alleged to have committed such corrupt or illegal practice and the date and place of commission of each such practice.

(3) The Tribunal may, upon such terms as to costs and otherwise as it may direct at any time, allow the particulars included in the said list to be amended or order such further and better particulars in regard to any matter referred to therein to be furnished as may in its opinion be necessary for the purpose of ensuring a fair and effectual trial of the petition.

85. If the provisions of s. 81, s. 83 or s. 117 are not complied with, the Election Commission shall dismiss the petition.

90(2). Subject to the provisions of this Act and of any rules made thereunder, every election petition shall be tried by the Tribunal, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908 (Act V of 1908), to the trial of suits.

90(4). Notwithstanding anything contained in s. 85, the Tribunal may dismiss an election petition which does not comply with the provisions of s. 81, s. 83 or s. 117.

92. The Tribunal shall have the powers, which are vested in a court under the Code of Civil Procedure, 1908 (Act V of 1908), when trying a suit in respect of the following matters :

(a) discovery and inspection ;

(b) enforcing the attendance of witnesses and requiring the deposit of their expenses ;

(c) compelling the production of documents ;

(d) examining witnesses on oath ;

(e) granting adjournments ;

(f) reception of evidence taken on affidavit ; and

(g) issuing commissions for the examination of witnesses, and may summon and examine *suo motu* any person whose evidence appears to it to be material ; and shall be deemed to be a civil court within the

meaning of ss. 480 and 482 of the Code of Criminal Procedure, 1898 (Act V of 1898)."

Now, we start with this that s. 83(3) grants a power to the Tribunal to amend particulars in a list. What is its scope ? Is it open to the Tribunal acting under this provision to direct new instances of the corrupt practices to be added to the list ? And if it is, is that what it did in the present case ? It is contended by the learned Solicitor-General on behalf of the appellants that s. 83(3) does not authorise the inclusion of new instances of corrupt practices, and that all that could be ordered under that provision was giving of fuller particulars in respect of instances given in the petition. The argument in support of this contention might thus be stated : Section 81 requires that the election petition should state the grounds on which it is founded. Section 83(1) enacts that it should contain a concise statement of the material facts on which the petitioner relies, and s. 83(2) provides that the petition should be accompanied by a list containing full particulars of the corrupt or illegal practices. When the three provisions are read together, it is clear that the legislature has made a distinction between grounds in s. 81(1), facts in s. 83(1) and full particulars in s. 83(2) ; and in this context, facts in s. 83(1) must mean instances of the charge on which the petition is grounded and the particulars referred to in s. 83(3) can only mean particulars in respect of the instances set out in the petition in accordance with s. 83(1). The consequence is that an instance of a corrupt practice not given in the petition, cannot be brought in under section 83(3). On this reasoning, it is contended that the order of the Tribunal dated November 28, 1953, permitting the respondent to allege that the appellants obtained the assistance of four Mukhias, whose names were mentioned for the first time in the amendment petition, is outside the ambit of the power conferred by s. 83(3).

We are unable to agree with this contention. In our opinion, s. 81(1) and s. 83, sub-ss. (1) and (2), when correctly understood, support the contention of the respondent that the Tribunal has authority to

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allow an amendment even when that involves inclusion of new instances, provided they relate to a charge contained in the petition. Taking first s. 81(1), it enacts that a petition may be presented calling an election in question on one of the grounds specified in s. 100, sub-ss. (1) and (2) and section 101. These sections enumerate a number of grounds on which the election may be set aside, including the commission of the corrupt practices mentioned in s. 123 of the Act, and quite clearly it is the different categories of objections mentioned in s. 100, sub-ss. (1) and (2), s. 101 and s. 123 that constitute the grounds mentioned in s. 81(1). Then we come to s. 83(1). It says that the petition should contain a concise statement of the material facts, and that would include facts relating to the holding of the election, the result thereof, the grounds on which it is sought to be set aside, the right of the petitioner to present the petition and the like. Then s. 83(2) enacts that when there is an allegation of corrupt or illegal practice, particulars thereof should be given in a separate list. If the grounds on which an election is sought to be set aside are something other than the commission of corrupt or illegal practices, as for example, when it is stated that the nomination had been wrongly accepted or that the returned candidate was not entitled to stand for election, then s. 83(2) has no application, and the requirements of s. 83(1) are satisfied when the facts relating to those objections are stated. The facts to be stated under s. 83(1) are thus different from the particulars which have to be given under s. 83(2). When, therefore, an election is challenged on the ground that the candidate has committed the corrupt practices mentioned in section 123, instances constituting particulars thereof will properly fall within s. 83(2) and not s. 83(1). The result is that the power under s. 83(3) to allow further and better particulars will include a power to allow fresh instances of the charges, which form the grounds on which the election is questioned.

We are fortified in this conclusion by decisions of English Courts, on statutory provisions which are in

*pari materia* with our enactment. Section 20 of the Parliamentary Elections Act, 1868 enacts that an election petition shall be in such form and state such matters as may be prescribed, that is, by the rules. Rule 2 of the Parliamentary Election Rules provides that the election petition "shall state the holding and result of the election and shall briefly state the *facts and grounds* relied on to sustain the prayer". Rule 5 gives the form of an election petition and the third paragraph therein is as follows :

"And your petitioners say (here state *the facts and grounds* on which the petitioners rely)."

The true scope of these provisions came up for consideration in *Beal* v. *Smith* (1). There, the election petition merely stated that "the respondent by himself and other persons on his behalf, was guilty of bribery, treating and undue influence." The respondent took out an application for an order that the petition be taken off the file on the ground that it merely stated the grounds but not the facts constituting the particulars as required by Rule 2. In the alternative, it was prayed that the petitioners should be directed to give particulars relating to the several corrupt practices. In rejecting the former prayer, Bovill C. J. observed :

"Now, with regard to the form of the petition, it seems to me that it sufficiently follows the spirit and intention of the rules ; and no injustice can be done by its generality, because ample provision is made by the rules to prevent the respondent being surprised or deprived of an opportunity of a fair trial, by an order for such particulars as the judge may deem reasonable. I think, therefore, it would be quite useless to require anything further to be stated in the petition than appears here."

With reference to the alternative prayer, it was held that an order that the particulars be furnished three days prior to the trial was a proper one to be passed. A similar decision was given in the *Greenoch Election Case,* a report of which is given in a footnote at page 150 of *Beal* v. *Smith*(1).

(1) (1869) L. R. 4 C.P. 145.

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These decisions establish that the requirement as to statement of grounds and facts is satisfied when the charge on which the election is sought to be set aside is set out in the petition, that the failure to give therein particulars of corrupt and illegal practices on which it is founded is not fatal to its maintainability, and that it is sufficient if the particulars are ordered to be furnished within a reasonable time before the commencement of the trial. On the same reasoning, the conclusion should follow that s. 81(1) and s. 83(1) are complied with, when the grounds on which the election is sought to be set aside, are stated in the petition, those grounds being, as already stated, the matters mentioned in s. 100, sub-ss. (1) and (2), s. 101 and s. 123, which is attracted by s. 100 (2) (b), and that the particulars in respect of those grounds, when they are charges of corrupt or illegal practices, fall within s. 83(2). There is, it should be observed, nothing in the Election law of England corresponding to s. 83(2), the question of particulars being left there to be dealt with under the Rules applicable to the trial of causes. The consequence is that while under the English practice, the petitioners are not obliged to state particulars of corrupt practices in their petition, under s. 83(2) a statement of those particulars must be made in the petition in a separate list annexed thereto. But this difference is more a matter of form than of substance, as s. 83(3) provides for particulars being called for and furnished in the course of the proceedings, and does not affect the conclusion as to the power of the Tribunal to allow new instances to be pleaded.

Section 83(3) provides, it should also be noted, for the list of particulars being amended or enlarged. It is not, however, to be inferred from this that when the particulars are mentioned in the body of the petition, they could not be amended. The reference to the list in s. 83 (3) must be taken along with the provision in s. 83(2) that particulars are to be set out in a list to be attached to the petition. The substance of the matter, therefore, is that under s. 83(3) particulars can be amended and supplemented, and the reason of it requires that the power could be exercised even when

the particulars are contained in the body of the petition. And even when there is no list filed, as in the present case, it would be competent to the Tribunal to allow an amendment giving for the first time instances of corrupt practice, provided such corrupt practice has been made a ground to attack in the petition.

One other argument urged by the appellants against this conclusion must now be considered. It is based on the language of s. 83(3). That section, it is urged, allowed firstly by an amendment of the particulars included in the list, and secondly "further and better particulars in regard to any matters referred to therein" and that, according to the appellants, means the particulars already given in the list. It is accordingly contended that the power to allow further and better particulars can be exercised only in respect of particulars already furnished, whether they be contained in the body of the petition or in the list, and that, therefore, an order permitting inclusion of new instances is outside the purview of s. 83 (3). The assumption underlying this contention is that the word "matter" in s. 83(3) means the same thing as "particulars". We see no reason why we should put this narrow construction on the word "matter". That word is, in our opinion, of wider import than particulars, and would also comprehend the grounds on which the election is sought to be set aside. If the construction contended for by the appellant is correct, the relevant portion of s. 83(3) will read as "further and better particulars in regard to any particulars referred to therein", and that does not appear to us to be either a natural or a reasonable reading of the enactment. Having regard to the scheme of the Act stated above, we think that s. 83(3) is intended to clothe the Tribunal with a general power to allow not merely an amendment of particulars already given but also inclusion of fresh particulars, pleading new instances, subject to the condition that they are in respect of a ground set out in the petition. This is in accordance with the law and practice obtaining in the Election Courts in England. Thus, in the *Carrickfergues Case*(1), in ordering

(1) [1869] 1 O'M. &H. 264, 265.

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an application for amending particulars, so as to include matters which had only then come to the knowledge of the petitioner, O'Brien, J., observed :

"In some respects the Petitioner came down here manifestly ignorant of the exact grounds upon which several of the charges of the Petition were founded.

"I therefore thought it reasonable upon a proper case being made out to allow the Petitioner to amend his bill of particulars by adding such facts as only recently came to his knowledge. I consider that in the trial of these petitions, where the purity of the election is questioned, the most searching enquiry should be instituted, and it is the duty of the Judge to afford every facility in his power to that investigation."

In the *Dublin Case*(1), the order was one directing a list of particulars to be amended, the Court observing :

"I shall allow the utmost latitude to amend, unless it is a case in which I see that the party kept back information at the time the list was furnished."

In this view, the order of amendment in question is not open to attack on the ground that it has permitted new instances to be raised. What has to be seen is whether those instances are, in fact, particulars in respect of ground put forward in the petition, or whether they are, in substance, new grounds of attack.

Before dealing with this question, it will be convenient to consider the alternative contention raised for the respondent that even if the Tribunal had no power to order the amendment in question under s. 83(3) of the Act, it was competent to do so under O. VI, r. 17, Civil Procedure Code, and that this Court should not in special appeal interfere with the discretion exercised by it in making the order. That raises the question which has been very much debated both in the Election Tribunals and in the High Courts of the States as to whether O. VI, r. 17 applies to proceedings before Election Tribunals. Mr. K. S. Krishnaswami Ayyangar, learned counsel for the respondent, contends that it does, by force of s. 90(2) of the Act, under which the Tribunal is to try a petition "as

(1) [1869] 1 O'M. & H. 270, 272.

nearly as may be in accordance with the procedure applicable under the Code of Civil Procedure, 1908, to the trial of suits." Now, in *A. G.* v. *Sillem*(1) it was stated by Lord Westbury that the word "practice"—and it means, as observed in *Poyser* v. *Mixors*(2) the same thing as procedure—denotes "the rules that make or guide the *cursus curise,* and regulate the proceedings in a cause within the walls or limits of the Court itself". And these proceedings include all steps, which might be taken in the prosecution or defence thereof, including an application for amendment. In *Maude* v. *Lowley*(3), the point arose for decision whether the power conferred on the Election Court by s. 21(5) of the Corrupt Practices (Municipal Elections) Act, 1872, to try the petition, subject to the provisions of the Act, as if it were a cause within its jurisdiction, carried with it a power to order amendment of the petition. It was held that it did. That precisely is the point here.

But it is contended for the appellants that O. VI, r. 17 cannot be held to apply to proceedings before the Tribunal by reason of s. 90(2), because (1) under that section, it is only the *trial* of the election petition that has to be in accordance with the provisions of the Civil Procedure Code, and the question of amendment of the petition relates to a stage anterior to the trial; (2) s. 92 enumerates certain matters in respect of which the Tribunal is to have the powers of a court under the Civil Procedure Code, and as amendment of pleadings is not one of them, O. VI, r. 17 must be held to have been excluded from its jurisdiction; (3) the Act makes a distinction between procedure and powers, s. 90(2) extends the provisions of the Civil Procedure Code to proceedings before Tribunals only in respect of procedure, and power to order amendment under O. VI, r. 17 is not within the extension; and (4) s. 90(2) is, in any event, subject to the provisions of the Act and the rules made thereunder, and the power of amendment under s. 83(3) being limited to particulars, the

(1) [1864] 10 H.L.C. 704,723; 11 E.R. 1200, 1209.

(2) [1881] 7 Q.B.D. 329, 333.

(3) (1874) L.R. 9 C.P. 165, 172.

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general power of amendment under O. VI, r. 17 must be held to have been excluded. The correctness of these contentions must now be examined.

(1) Taking the first contention, the point for decision is as to what the word 'trial' in s. 90(2) means. According to the appellants, it must be understood in a limited sense, as meaning the final hearing of the petition, consisting of examination of witnesses, filing documents and addressing arguments. According to the respondent, it connotes the entire proceedings before the Tribunal from the time that the petition is transferred to it under s. 86 of the Act until the pronouncement of the award. While the word 'trial' standing by itself is susceptible of both the narrow and the wider senses indicated above, the question is, what meaning attaches to it in s. 90 (2), and to decide that we must have regard to the context and the setting of the enactment. Now, the provisions of the Act leave us in no doubt as to in what sense the word is used in s. 90(2). It occurs in Chapter III which is headed "Trial of election petitions". Section 86(4) provides that if during the course of the trial any member of a Tribunal is unable to perform his functions, the Election Commission is to appoint another member, and thereupon the trial is to be continued. This provision must apply to retirement or relinquishment by a member, even before the hearing commences, and the expression "during the course of the trial" must therefore include the stages prior to the hearing. Section 88 again provides that the trial is to be held at such places as the Election Commission may appoint. The trial here must necessarily include the matters preliminary to the hearing such as the settlement of issues, issuing directions and the like. After the petition is transferred to the Election Tribunal under s. 86, various steps have to be taken before the stage can be set for hearing it. The respondent has to file his written statement; issues have to be settled. If 'trial' for the purpose of s. 90(2) is to be interpreted as meaning only the hearing, then what is the provision of law under which the Tribunal is to call for written statements and settle issues? Section 90(4) enacts

that when an election petition does not comply with the provisions of s. 81, s. 83 or s. 117, the Tribunal may dismiss it. But if it does not dismiss it, it must necessarily have the powers to order rectification of the defects arising by reason of non-compliance with the requirements of s. 81, s. 83 or section 117. That not being a power expressly conferred on it under s. 92 can only be sought under s. 90(2), and resort to that section can be had only if trial is understood as including proceedings prior to hearing. Section 92 enacts that the Tribunal shall have powers in respect of various matters which are vested in a court under the Civil Procedure Code when trying a suit, and among the matters set out therein are discovery and inspection, enforcing attendance of witnesses and compelling the production of documents, which clearly do not form part of the hearing but precede it. In our opinion, the provisions of Chapter III read as a whole, clearly show that 'trial' is used as meaning the entire proceedings before the Tribunal from the time when the petition is transferred to it under s. 86 until the pronouncement of the award.

(2) The second contention urged on behalf of the appellants is that if the provisions of the Civil Procedure Code are held to be applicable in their entirety to the trial of election petitions, then there was no need to provide under s. 92 that the Tribunal was to have the powers of courts under the Code of Civil Procedure in respect of the matters mentioned therein, as those powers would pass to it under s. 90(2). But this argument overlooks that the scope of s. 90(2) is in a material particular different from that of s. 92. While under s. 90(2) the provisions of the Civil Procedure Code are applicable only subject to the provisions of the Act and the rules made thereunder, there is no such limitation as regards the powers conferred by s. 92. It was obviously the intention of the legislature to put the powers of the Tribunal in respect of the matters mentioned in s. 92 as distinguished from the other provisions of the Code on a higher pedestal, and as observed in *Sitaram* v. *Yograjsing*(1), they are

(1) A.I.R. [1953] Bom. 293.

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the irreducible minimum which the Tribunal is to possess.

(3) It is then argued that s. 92 confers powers on the Tribunal in respect of certain matters, while s. 90(2) applies the Civil Procedure Code in respect of matters relating to procedure, that there is a distinction between power and procedure, and that the granting of amendment being a power and not a matter of procedure, it can be claimed only under s. 92 and not under s. 90(2). We do not see any antithesis between 'procedure' in s. 90(2) and 'powers' under s. 92. When the respondent applied to the Tribunal for amendment, he took a procedural step, and that, he was clearly entitled to do under s. 90(2). The question of power arises only with reference to the order to be passed on the petition by the Tribunal. Is it to be held that the presentation of a petition is competent, but the passing of any order thereon is not? We are of opinion that there is no substance in this contention either.

(4) The last contention is based on the provision in s. 90(2) that the procedure prescribed in the Code of Civil Procedure is to apply subject to the provisions of the Act and the Rules. It is argued that s. 83(3) is a special provision relating to amendments, and that it must be construed as excluding O. VI, r. 17. The result, according to the appellants, is that if an amendment could not be ordered under s. 83(3), it could not be ordered under O. VI, r. 17. This contention appears to us to be wholly untenable. The true scope of the limitation enacted in s. 90(2) on the application of the procedure under the Civil Procedure Code is that when the same subject-matter is covered both by a provision of the Act or the rules and also of the Civil Procedure Code, and there is a conflict between them, the former is to prevail over the latter. This limitation cannot operate, when the subject-matter of the two provisions is not the same. Section 83(3) relates only to amendment of particulars, and when the amendment sought is one of particulars, that section will apply to the exclusion of any rule of the Civil Procedure Code which might conflict with it, though it does not appear that there is any such rule. But where the amendment

relates not to particulars but to other matters, that is a field not occupied by s. 83(3), and O. VI, r. 17 will apply. The fallacy in the argument of the appellants lies in the assumption that s. 83(3) is a comprehensive enactment on the whole subject of amendment, which it clearly is not. In this view, there is no scope for the application of the maxim, *expressio unius exclusio alterius,* on which the appellants rely. It should be mentioned that the provision in s. 83(2) for stating the particulars separately in a list attached to the petition is one peculiar to the Indian Statute, and the legislature might have considered it desirable *ex abundanti cautela* to provide for a power of amendment in respect thereto. To such a situation, the maxim quoted above has no application. In Maxwell on Interpretation of Statutes, Tenth Edition, pages 316—317, the position is thus stated :

"Provisions sometimes found in statutes, enacting imperfectly or for particular cases only that which was already and more widely the law, have occasionally furnished ground for the contention that an intention to alter the general law was to be inferred from the partial or limited enactment, resting on the maxim *expressio unius, exclusio alterius.* But that maxim is inapplicable in such cases. The only inference which a court can draw from such superfluous provisions (which generally find a place in Acts to meet unfounded objections and idle doubts), is that the legislature was either ignorant or unmindful of the real state of the law, or that it acted under the influence of excessive caution."

Vide also Halsbury's Laws of England, Hailsham's Edition, Volume 31, page 506, para. 651. We are accordingly of opinion that the application of O. VI, r. 17, Civil Procedure Code to the proceedings before the Tribunal is not excluded by s. 83(3).

Turning next to the authorities, the decision of this Court in *Jagan Nath* v. *Jaswant Singh*(1) goes far to conclude the question in favour of the respondent. In that case, a petition to set aside an election was filed without impleading one of the candidates, Baijnath,

(1) [1954] S.C.R. 892.

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who had been nominated but had withdrawn from the contest. That was against s. 82 of the Act. The respondent then applied for an order dismissing the petition on the ground that it could not go on in the absence of Baijnath. The Tribunal held on this petition that the non-joinder of Baijnath was not fatal to the maintainability of the petition, and passed an order directing him to be impleaded. This order was challenged on the ground that there was no power in the Tribunal to order a new party to be impleaded. But this Court repelled this contention, and held on a review of the provisions of the Act including s. 90(2) that the Tribunal had the power to pass the order in question under O. 1, rr. 9, 10 and 13. This is direct authority for the position that trial for purposes of s. 90(2) includes the stages prior to the hearing of the petition, and the word 'procedure' therein includes power to pass orders in respect of matters not enumerated in s. 92. In *Sitaram* v. *Yograjsingh*(1) it was held that 'procedure' in s. 90(2) and 'powers' in s. 92 were interchangeable terms, that the procedure applicable under s. 90(2) was wider than what would be applicable to the hearing of a suit, and that the Tribunal had power in a proper case to order amendment of a petition. In *Sheo Mahadeo Prasad* v. *Deva Sharan*(2), it was held that the application of O. VI, r. 17 to proceedings before the Tribunal was excluded by section 83(3) of the Act. For the reasons already given, we are unable to agree with this view. We are of opinion that the law was correctly laid down in *Sitaram* v. *Yograjsingh*(1), and in agreement with it, we hold that the Tribunal has power in appropriate cases to direct amendment of the petition under O. VI, r. 17.

It is next contended for the appellants that even if s. 83(3) does not exclude the application of O. VI, r. 17 to the proceedings before the Tribunal, the exercise of the power under that rule must, nevertheless, be subject to the conditions prescribed by s. 81 for presentation of an election petition, that one of those conditions was that it should be presented within the

(1) A.I.R. [1953] Bom. 293. (2) A.I.R. [1955] Patna 81.

time allowed therefor, and that accordingly no amendment should be allowed which would have the effect of defeating that provision. The decisions in *Maude* v. *Lowley*(1) and *Birbeck and others* v. *Bullard*(2) are relied on in support of this contention. In *Maude* v. *Lowley*(1), the facts were that an election petition was filed alleging that the successful candidate had employed as paid canvassers residents of the ward, and that the election was, in consequence, void. Then an application was filed for amending the petition by alleging that residents of other wards were also similarly employed, and that was ordered by Baron Pollock. The correctness of this order was questioned on the ground that on the date of the application for amendment a fresh petition on those allegations would be barred, and that therefore the Court had no jurisdiction to pass the order which it did. In upholding this contention, Lord Coleridge C. J. observed that section 21(5) gave power to the Court to amend the petition, that that power was subject to the provisions of the Act, that one of those provisions was s. 13(2), which prescribed the period within which an election petition could be filed, that the power of amendment could be exercised only subject to this provision, and that accordingly an amendment which raised a new charge should be rejected if a fresh petition on that charge would be barred on that date. He also observed that the matter was not one of discretion but of jurisdiction. This was followed in *Clark* v. *Wallond*(3). In *Birbeck and others* v. *Bullard*(2) the application was to amend the petition by adding a new charge, and it was held that that could not be done after the expiry of the period of limitation fixed in the Act for filing an election petition, and the decision was put on the ground that the power to grant amendment was "subject to the provisions of the Act."

On these authorities, it is contended for the appellants that even if the Tribunal is held to possess a power to order amendments generally under O. VI,

(1) [1874] L.R. 9 C.P. 165.
(2) (1885-86) 2 Times Law Reports 273.
(3) (1883) 52 L.J.Q.B. 321.

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r. 17, an order under that Rule cannot be made when a new ground or charge is raised, if the application is made beyond the period of limitation prescribed for filing election petitions. The Tribunal sought to get over this difficulty by relying on the principle well-established with reference to amendments under O. VI, r. 17 that the fact that a suit on the claim sought to be raised would be barred on the date of the application would be a material element in deciding whether it should be allowed or not but would not affect the jurisdiction of the court to grant it in exceptional circumstances as laid down in *Charan Das* v. *Amir Khan*(1). But this is to ignore the restriction imposed by s. 90(2) that the procedure of the Court under the Code of Civil Procedure in which O. VI, r. 17 is comprised, is to apply subject to the provisions of the Act and the rules, and there being no power conferred on the Tribunal to extend the period of limitation prescribed, an order of amendment permitting a new ground to be raised beyond the time limited by s. 81 and r. 119 must contravene those provisions and is, in consequence, beyond the ambit of authority conferred by s. 90(2). We are accordingly of opinion that the contention of the appellants on this point is well-founded, and must be accepted as correct.

The result of the foregoing discussion may thus be summed up :

(1) Under s. 83(3) the Tribunal has power to allow particulars in respect of illegal or corrupt practices to be amended, provided the petition itself specifies the grounds or charges, and this power extends to permitting new instances to be given.

(2) The Tribunal has power under O. VI, r. 17 to order amendment of a petition, but that power cannot be exercised so as to permit new grounds or charges to be raised or to so alter its character as to make it in substance a new petition, if a fresh petition on those allegations will then be barred.

We have now to decide whether on the principles stated above, the order of amendment dated November 28, 1953, was right and within the competence of

(1) [1920] L.R. 47 I.A. 255.

the Tribunal. To decide that, we must examine whether what the respondent sought to raise by way of amendment was only particulars in respect of a charge laid in the petition, or whether it was a new charge. The paragraph in the petition relevant to the present question is 7(c), and that has been already set out *in extenso.* Leaving out the allegations relating to the meetings held at Kakori, what remain of it is only the allegation that "respondents 1 and 2 *could* in furtherance of their election enlist the support of Government servants." The word "could" can only mean that the respondents were in a position to enlist the support of Government servants. It does not amount to an averment that, in fact, they so enlisted their support. It is argued for the respondent that the allegation in para 7(c) really means that the appellants had, in fact, enlisted the support of Government servants, and that that amounts to a charge under s. 123(8) of the Act of procuring the assistance of Government servants for furtherance of their election prospects. Why then does the petition not state it in plain terms ? The difference between "could" and "did" is too elementary to be mistaken. The respondent has in other paragraphs relating to other charges clearly and categorically asserted what the appellants did and what their agents did. And why was a different phraseology adopted in para 7(c) ? It is to be noted that apart from this allegation, the rest of the paragraph is taken up with details of the two meetings at Kakori, and it winds up with the following allegation :

"The respondents 1 and 2 by this device succeeded in creating an impression on the voters that they had the support of the District officials."

This suggests that the charge which the respondent sought to level against the appellants was that they moved in public so closely with high dignitaries as to create in the minds of the voters the impression that they were favoured by them. We are unable to read into the allegations in para 7(c) as originally framed any clear and categorical statement of a charge under

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s. 123(8), or indeed under any of the provisions of the Election law.

The respondent does not dispute that the language in which the allegation in para 7(c) is couched does not import that any corrupt practice had, in fact, been committed, but he contends that this defect is merely one of expression, and that the appellants had understood it correctly as meaning commission of corrupt practices by them, which is what the respondent meant to assert. It is no doubt true that pleadings should not be too strictly construed, and that regard should be had to the substance of the matter and not the form. Even so, what, in substance, is the charge which could be gathered from a general and vague allegation that the appellants "could" enlist the support of Government officials ? It should not be forgotten that charges of corrupt practices are quasi-criminal in character, and that the allegations relating thereto must be sufficiently clear and precise to bring home the charges to the candidates ; and judged by that standard, the allegation in para 7(c) is thoroughly worthless. The contention of the respondent that the appellants understood the allegation as meaning that they had committed corrupt practices, is not borne out by the record. In the application which the appellants filed on January 24, 1953, for trial of certain questions as preliminary issues, they stated in para 7 as follows :

"Para 7(c). The allegation contained in this para is vague and indefinite. It nowhere alleges that the respondent nos. 1 and 2 obtained or procured or abetted, or attempted to obtain or procure the assistance of any government servants. No list given."

And again, in the objection filed by the appellants to the application of the respondent for amendment, they stated that it was doubtful whether even the original allegation in para 7(c) amounted to a major corrupt practice within s. 123(8) of the Act. The Tribunal does not deal with this aspect of the matter and simply assumes that the petition as presented did raise a charge under s. 123(8). We are of opinion

that this assumption is erroneous and that its finding is vitiated thereby.

But even if we are to read "could" in para 7(c) as meaning "did", it is difficult to extract out of it a charge under s. 123(8). The allegation is not clear whether the Government servants were asked by the appellants to support their candidature, or whether they were asked to assist them in furtherance of their election prospects, and there is no allegation at all that the Government servants did, in fact, assist the appellants in the election. On these allegations, it is difficult to hold that the petition in fact raised a charge under s. 123(8). It is a long jump from the petition as originally laid to the present amendment, wherein for the first time it is asserted that certain Mukhias—no Mukhias are mentioned in the petition—assisted the appellants in furtherance of their election prospects, and that thereby the corrupt practice mentioned in s. 123(8) had been committed. The new matters introduced by the amendment so radically alter the character of the petition as originally framed as to make it practically a new petition, and it was not within the power of the Tribunal to allow an amendment of that kind.

Counsel for the appellants also contended that even if the Tribunal had the power under O. VI, r. 17 to permit an amendment raising a new charge, it did not under the circumstances exercise a sound and judicial discretion in permitting the amendment in question. There is considerable force in this contention. The election petition was filed on June 10, 1952, which was the last date allowed under s. 81 and r. 119. It contained in para 7(c) only the bare bones of a charge under s. 123(8), assuming that it could be spelt out of it. Nothing further is heard of this charge, until we come to December, 1952, when respondents 4 and 9 who sailed with the petitioner, filed statements alleging that the appellants had obtained the assistance from Government servants including Mukhias in furtherance of their election prospects. On January 16, 1953, the respondent herein filed a replication in which he sought to weave the above

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allegations into the fabric of his petition, but the result was a mere patchwork. It should be mentioned that there is no provision of law under which a replication could be filed as a matter of right, nor was there an order of the Tribunal allowing it. On February 25, 1953, the appellants opened their arguments at the hearing of the preliminary issue, and thereafter, with a view to remedy the defects which must have been then pointed out, the respondent filed his present application for amendment. Even that was defective, and had to be again amended. And what is remarkable about this application is that no attempt was made to explain why it was made after such long delay and why the new allegations were not made in the original petition. The position taken up by the respondents was that the amendment only made express what was implicit in para 7(c). The Tribunal was of opinion that notwithstanding all these features, the amendment should be allowed as it was in the interests of the public that purity of elections should be maintained. But then, public interests equally demand that election disputes should be determined with despatch. That is the reason why a special jurisdiction is created and Tribunals are constituted for the trial of election petitions. Vide the observations of Lord Simonds L.C. in *Senanayake* v. *Navaratne*(1).

In the present case, having regard to the circumstances stated above, the order of amendment would be open to grave criticism even if it had been made in an ordinary litigation, and in an election matter, it is indefensible. The strongest point in favour of the respondent is that we should not in special appeal interfere with what is a matter of discretion with the Tribunal. It is not necessary to pursue this matter further, as we are of opinion that the order of amendment dated November 28, 1953, is, for the reasons already stated, beyond the powers of the Tribunal, and therefore must be set aside and the finding based on that amendment that the appellants had committed the corrupt practice mentioned in s. 123(8) of the Act must be reversed. In this view, it becomes unnecessary

(1) [1954] A.C. 640.

to deal with the further contention of the appellants that there is no legal evidence in support of the finding of the Tribunal that they had obtained the assistance of four Mukhias in furtherance of their election prospects.

Then there is the question whether the first appellant has, as held by the Tribunal, again by a majority, contravened s. 123(7) of the Act. The facts found are that one Ganga Prasad was engaged by the first appellant to prepare three carbon copies of the Electoral Rolls and was paid Rs. 550/- at the rate of Re. 0-8-0 per hundred voters and likewise, one Viswanath Pande was engaged to enter the names of the voters in printed cards and was paid Rs. 275/- at Re. 0-4-0 per hundred cards. Both these are undoubtedly expenses incurred in connection with the election and have, in fact, been shown by the first appellant in the return of election expenses against column K. Now the contention of the respondent which has found favour with the Tribunal is that both Ganga Prasad and Viswanath Pande must be held to have been employed for payment in connection with the election, and as with their addition, the number of persons allowed to be employed under Schedule VI has been exceeded, the corrupt practice mentioned in s. 123(7) of the Act has been committed. It is contended by the Solicitor-General that on the facts found Ganga Prasad and Viswanath Pande cannot be said to have been *employed* by the first appellant, and that the conclusion of the Tribunal to the contrary is based on a misconception of law. Now, whether a person is an employee or not is a question of fact, and if there had been any evidence in support of it, this Court would not interfere with the finding in special appeal. But the respondent, on whom the burden lies of establishing contravention of r. 118, has adduced no evidence whatsoever, and all that is on record is what the first appellant deposed while he was in the box. He merely stated that Ganga Prasad and Viswanath Pande were asked to do the work on contract basis. That is wholly insufficient to establish that there was a contract of employment of those persons by him. It was argued for the respondent that there could be a contract of employment in

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respect of piece-work as of time-work, and that the evidence of the first appellant was material on which the Tribunal could come to the conclusion to which it did. It may be conceded that a contract of employment may be in respect of either piece-work or time-work but it does not follow from the fact that the contract is for piece-work that it must be a contract of employment. There is in law a well-established distinction between a contract for services, and a contract of service, and it was thus stated in *Collins* v. *Hertfordshire Central Council*(1) :

"In the one case the master can order or require what is to be done while in the other case he can not only order or require what is to be done but how it shall be done."

This Court had occasion to go into this question somewhat fully in *Dharangadhara Chemical Works Ltd.* v. *State of Saurashtra*(2), and it was there held that the real test for deciding whether the contract was one of employment was to find out whether the agreement was for the personal labour of the person engaged, and that if that was so, the contract was one of employment, whether the work was time-work or piece-work or whether the employee did the whole of the work himself or whether he obtained the assistance of other persons also for the work. Therefore, before it could be held that Ganga Prasad and Viswanath Pande were employed by the first appellant, it must be shown that the contract with them was that they should personally do the work, with or without the assistance of other persons. But such evidence is totally lacking, and the finding, therefore, that they had been employed by the first appellant must be set aside as based on no evidence.

Neither of the grounds on which the election of the appellants has been declared void, could be supported. We must accordingly allow the appeal, set aside the order of the Tribunal, and dismiss the election petition filed by the respondent, with costs of the appellants throughout.

*Appeal allowed.*
*Election petition dismissed.*

(1) [1947] K.B.598,615.

(2) [1957] S.C.R 152.