

## MOHD. YUNUS SALEEM

v.

## SHIV KUMAR SHASTRI AND OTHERS.

March 25, 1974

[P. N. BHAGWATI AND P. K. GOSWAMI, JJ.]

*Representation of the People Act (43 of 1951), Ss. 30, 116-A and 123(1)(A)(a)—Election Commissioner if he can alter date of poll—Appreciation of evidence by Supreme Court—Bribe for withdrawal after the date fixed for withdrawal—If corrupt practice.*

A parliamentary constituency from which election to Lok Sabha took place in March 1971 consisted of five assembly constituencies. The polling at two of them was scheduled to take place on March 1, and at the other three on March 3, 1971. 15th March, 1971 was fixed as the last day for the completion of the election. The polling at the first two constituencies took place on March 1, 1971, but, on March 2, there was a communal riot as a result of which, the Election Commissioner postponed the poll at the other three constituencies from March 3 to March 9. After the polling took place the first respondent was declared elected. The appellant filed an election petition challenging the election of the first respondent alleging several corrupt practices against him, one of which was that on 6th March, the second respondent, who was one of the candidates, was induced to withdraw from the contest by the first respondent offering to recommend him to a seat in the legislative council and by a financier offering him a large sum of money; and that the second respondent, though he declined the offers, did, in fact, withdraw. He also contended that the Election Commissioner had no power to alter the date of poll at the remaining constituencies. The election petition was dismissed by the High Court.

In appeal to this Court, the first respondent raised the contention that even if the facts relating to the offers were established, the first respondent would not be guilty of the corrupt practice under s. 123(1)(A)(a), because, the withdrawal of the 2nd respondent was after the date fixed for withdrawal from being a candidate.

Dismissing the appeal to this Court.

**HELD.** (1) The Election Commissioner had power to alter the date of the poll from 3rd March to 9th March in the remaining constituencies. Ss. 57 & 58 could not be invoked by Election Commissioner for this purpose, because they are applicable only in the circumstances specified and in the manner provided, in those sections and s. 153, on which the High Court relied, is also not applicable, because it in terms provides only for extending the time for completion of election and not for altering the date of the poll. But s. 30 of the Representation of the People Act, read with s. 21 of the General Clauses Act gives the necessary power to the Election Commissioner to alter the date of the poll. [742H; 743F-H; 744C-E]

(2) The amendment of the date of the poll gets engrafted in the original form no. 1 in pursuance of the subsequent notification made in valid exercise of the power under s. 30 of the Representation of the People Act read with s. 21 of the General Clauses Act, and therefore, a fresh notification of the date under r.3 of the Conduct of Election Rules, in the requisite form, is not necessary. [744E-G]

(3) If the facts regarding the offers to the second respondent had been established it would amount to corrupt practice within the meaning of s. 123(1)(A)(a) of the Representation of the People Act. (a) Bribery to induce a person to withdraw from being a candidate at an election amounts to corrupt practice within the meaning of the sub-section. It cannot be said that since the time for withdrawal of candidature fixed for that purpose in the appropriate notification had already expired in this case there could be no withdrawal of candidature after the date. When s. 123(1)(A)(a) speaks of withdrawal from being a candidate it is not limited to a candidate who has been validly nomi-

nated and who has withdrawn earlier according to law. The expression "to withdraw from being a Candidate" cannot be given a restricted meaning and confined to the stage where law permits a candidate to withdraw from the election. For the purpose of the section the words are of wide amplitude to include subsequent withdrawal even at the last stage prior to the poll. [746B-747C]

(b) The omission of the words "retire from contest" from the section as it originally stood is not significant, because the dictionary meaning of the word 'withdraw' includes 'to retire from the field or battle or any contest', and it is because the words 'retire from contest' have become unnecessary that they were advisedly deleted by the legislature. [746G-H]

(c) Since purity of elections is the most important object of the Act, a narrow meaning to the word "withdraw" to refer only to legal withdrawal under section 37 would defeat the very aim. We have therefore, to give meaning to the word "withdraw" keeping in mind the object and scheme of the Act with a view to effectuate the intention of the legislature to ensure purity in elections; else there will be an absurd position where actual withdrawal after the time limit by taking bribe will be free from the vice of corrupt practice whereas that prior to it will not be so. Such an intention cannot be attributed to the legislature from deletion of the words "retire from contest". The word "withdraw" is comprehensive enough to also connote "retire from contest". [747C-F]

(4) On the evidence, however, it could not be held that any corrupt practice had been proved to have been committed by the first respondent under s. 123(1) to (4) of the Act. In the matter of appreciation of oral testimony in an election dispute this Court, in an appeal under s. 116-A, must have convincing and clinching reasons to take a contrary view from that of the High Court. It is not enough that another view is merely possible on the oral evidence. Strict proof of the allegations is called for and the High Court has in the present case rightly declined to accept the oral evidence of the appellant's side and rightly preferred that on the respondent's side. [753A-E]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 282 of 1972.

From the judgment and order dated the 21st December, 1971, of the Allahabad High Court in Election Petition No. 6 of 1971.

*A. Subba Rao and J. B. Dadachanji*, for the appellant.

*Hardyal Hardy, S. S. Khanduja and S. K. Dhingra*, for respondent No. 1.

*L. N. Sinha*, Solicitor General of India and *M. N. Shroff*, for the respondent no. 2.

The Judgment of the Court was delivered by

GOSWAMI, J. This election appeal under section 116A of the Representation of the People Act, 1951 (briefly the Act) by the appellant, Mohd. Yunus Saleem, the defeated Congress (R) candidate, is against the judgment of the Allahabad High Court wherein he challenges the election of the B.K.D. candidate, Shiv Kumar Shastri (Respondent No. 1) to the Lok Sabha from the 76 Aligarh Parliamentary constituency in the general elections held in March 1971. This constituency consists of five Assembly constituencies, namely, 376-Aligarh, 377-Koil, 378-Iglas, 379-Khair and 380-Chandaus. There

were seven candidates on the run for the election from this constituency. The poll was scheduled to take place in Aligarh and Koil on March 1, 1971 and in Iglas, Khair and Chandaus on March 3, 1971. The polling in Aligarh and Koil was completed peacefully on March 1, 1971 and the appellant obtained the highest number of votes as will appear from the chart given below :

|                       | 367<br>City | 377<br>Koil | 378<br>Iglas | 379<br>Khair | 380<br>Chandaus | Total   |
|-----------------------|-------------|-------------|--------------|--------------|-----------------|---------|
| <i>Sarva Shri</i>     |             |             |              |              |                 |         |
| Amar Singh            | 205         | 559         | 603          | 760          | 868             | 3,995   |
| Jagdish Gandhi        | 500         | 1,291       | 1,114        | 1,103        | 927             | 4,937   |
| Pooran Singh<br>Malan | 18,385      | 4,165       | 310          | 337          | 386             | 23,583  |
| Mohd. Yunus<br>Saleem | 44,422      | 25,228      | 17,134       | 19,372       | 18,030          | 124,186 |
| Virpal Singh          | 622         | 1,240       | 1,026        | 1,254        | 1,320           | 5,462   |
| Shiv Kumar<br>Shastri | 4,719       | 16,260      | 42,281       | 53,240       | 43,012          | 180,313 |
| Saheb Singh           | 558         | 3,170       | 1,653        | 1,671        | 3,076           | 6,958   |

On March 2, 1971 a communal riot between Hindus and Muslims took place in Aligarh city and as a result of this the Election Commission on receipt of reports of the local authorities at Aligarh postponed the poll in the remaining segments from March 3, 1971 to March 9, 1971. As will appear from the above chart, during the poll this time on March 9, 1971, the first respondent obtained a very high percentage of votes with the result that he was declared elected. The 2nd respondent, although a Samyukt Socialist Party candidate (SSP), was sponsored by the four parties alliance consisting of Jan Sangh, Swatantra, Congress led by Shri Nijalingappa, and Samyukt Socialist Party.

The appellant alleges several corrupt practices in his election petition before the High Court and also raises certain question of law. The Chief Election Commissioner has been impleaded as a respondent in this appeal. The High Court has repelled the contentions of the appellant. We are now concerned in this appeal with the following issues :—

Issue No. 2 : "Whether the order of the Election Commission adjourning the poll from 3rd March to 9th March was without jurisdiction and illegal" ?

Issue No. 5 : "Whether Pooran Singh Malan (respondent No. 2) withdrew from the election on 6th March and asked his supporters to vote instead for respondent No. 1. If so, was this done as a result of inducements offered at the instance of respondent No. 1" ?

A Issue No. 7 : "Whether voters were induced by threats offered by Hukum Singh, the polling agent of respondent No. 1, to promise not to vote for the petitioner but to vote for respondent No. 1 (as detailed in paragraph 28 of the petition)" ?

B Issue No. 8 : "Whether respondent No. 1 and Kalyan Singh, M.L.A. appealed to Hindu voters in Gordha village on 7-3-1971 not to vote for the petitioner because he was a Muslim (as detailed in para 29 of the petition); and whether similar appeals were made to voters by respondent No. 1 and Prakash Vir Shastri, Virendra Varma, Raghunath Singh and Ram Prasad Deshmukh in Khair, Chandaus and Iglas between 7-3-1971 and 9-3-1971 (as detailed in para 30 of the petition)" ?

C Issue No. 8A: "Whether respondent No. 1 and the other persons named in paragraph 30 of the petition and the statement of further particulars made speeches in Khair, Chandaus and Iglas Tehsils alleging that the petitioner was responsible for communal riots in Aligarh and other places, which statements were known by them to be false" ?

D Issue No. 9 : "Whether Virendra Varma and Raghunath Singh appealed to Jat voters to vote for respondent No. 1 on the ground that he was the candidate of a party led by Shri Charan Singh (as detailed in para 30 of the petition)" ?

E Issue No. 10 : "Whether respondent No. 1's election agent Yogendra Pal Singh and Virendra Varma and Charan Singh appealed to Jat and Thakur voters at Iglas on 7-3-1971 not to vote for the petitioner as he was a Muslim and not to allow Muslim, Jatav and Brahmin voters to vote (as detailed in para 34 of the petition)" ?

F Issue No. 11 : "Whether at the same meeting mentioned in para 34) Yogendra Pal Singh falsely stated that the petitioner was a Razakar of Hyderabad and had instigated the Aligarh riots" ?

G Issue No. 12 : "Whether respondent No. 1 has committed corrupt practices as defined in clauses (1), (2), (3), (3A) and (4) of section 123 of the Representation of the People Act" ?

The learned counsel for the appellant has firstly addressed us on the 2nd issue and we will, therefore, take the same first. To appreciate the point in controversy, some facts may be stated :

H The Election Commission published a notification in the Gazette of India Extraordinary dated 27th January, 1971, fixing the following dates for the purpose of the election under section 30 of the Act :

February 3, 1971—The last date for making nominations.

February 4, 1971—The date for the scrutiny of nominations.

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February 6, 1971—The last date for the withdrawal of candidatures.

Various dates between March 1, 1971 and March 5, 1971—For holding the poll in different constituencies in Uttar Pradesh.

March 15, 1971—The date before which the election shall be completed.

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The notification fixed March 1, 1971, for the poll in the Aligarh and Koil segments and March 3, 1971 in the Iglas, Khair and Chandaus segments. The learned counsel for the appellant submits that the Election Commission had no jurisdiction or authority to alter the dates fixed under clause (d) of section 30 in the aforesaid notification except under circumstances mentioned in sections 57 and 58 of the Act. We may, therefore, first look at sections 57 and 58 of the Act. Section 57 in terms provides for a situation when the proceedings at any polling station in an election are interrupted or obstructed by any riot or open violence, or if it is not possible to take the poll at any polling station on account of any natural calamity, or any other sufficient cause. Section 57 empowers the presiding officer or the returning officer to adjourn the poll to another date in any of those circumstances.

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The returning officer under sub-section (2) has to report the circumstances to the appropriate authority and the returning officer next fixes appropriate dates for poll with the previous approval of the Election Commission. Under section 57(2) when the poll has to be postponed after the same has commenced and voters have exercised their right to vote for some time, there is provision for fixing the hours during which the next poll shall be taken and there is a direction in this sub-section not to count the votes cast at such election until such adjourned poll has been completed. Section 57, therefore, does not deal with the direct exercise of power by the Election Commission in altering dates of poll under the conditions specified in that section. Section 58 provides for a contingency where a ballot box used at a polling station or at a place fixed for the poll is unlawfully taken out of the custody of the presiding officer or the returning officer, or is accidentally or intentionally destroyed or lost or is damaged or tampered with to such an extent that the result of the poll at that polling station or place cannot be ascertained or any such error or irregularity in procedure is likely to vitiate the poll is committed therein. In such an event the returning officer has to report the matter to the Election Commission who after taking all material circumstances into account has to take a decision to declare the poll void and appoint a day and fix the hours for taking a fresh poll after an appropriate notification in that behalf. The Election Commission under this section may even decide against a fresh poll after considering the various circumstances and direct the returning officer for the further conduct and completion of the election. It is, therefore, clear that these two sections can be invoked only in very specified circumstances and in the manner provided therein. On the other hand, our attention is drawn to two other sections, namely, section 30 and section 153 of the Act, which were

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- A relied upon by the respondents in the High Court and the submissions were accepted there. We may read these two sections :

Section 30 : "Appointment of dates for nominations, etc.—

As soon as the notification calling upon a constituency to elect a member or members is issued, the Election Commission shall, by notification in the Official Gazette, appoint—

- B (a) the last date for making nominations, which shall be the seventh day after the date of publication of the first-mentioned notification or, if that day is a public holiday, the next succeeding day which is not a public holiday;
- C (b) the date for the scrutiny of nominations, which shall be the day immediately following the last date for asking nominations or, if that day is a public holiday, the next succeeding day which is not a public holiday;
- D (c) the last date for the withdrawal of candidatures, which shall be the second day after the date for the scrutiny of nominations or, if that day is a public holiday, the next succeeding day which is not a public holiday;
- (d) the date or dates on which a poll shall, if necessary, be taken, which or the first of which shall be a date not earlier than the twentieth day after the last date for the withdrawal of candidatures; and
- E (e) the date before which the election shall be completed".

Section 153 : "Extension of time for completion of election—

- F It shall be competent for the Election Commission for reasons which it considers sufficient, to extend the time for the completion of any election by making necessary amendments in the notification issued by it under section 30 or sub-section (1) of section 39".

- G The High Court has held that "section 153 can be construed as declaring the competency of the Election Commission to extend time under clause (d) as well as clause (e) of section 30". We are unable to agree with the High Court that section 153 can be properly invoked in this case to the aid of the Election Commission in changing the dates of poll for the three remaining constituencies, specified in the notification under section 30(d) of the Act. Section 153 in terms provides for extending "the time for completion of any election by making necessary amendments in the notification issued by it under section 30.....". Section 30 (e) deals with "the date before which the election shall be completed". It is clear in this case, as set out earlier,
- H that the last date for completion of the election was fixed by the appropriate notification to be 15th March, 1971 and the altered date of poll in this case from 3rd to 9th March is within the last date for completion of the poll under section 30(e). Section 153, therefore, cannot

come to the aid of the Election Commission to alter the date of poll, as has been done in this case, as the said section is inapplicable to the facts and circumstances of this case. We may, therefore, examine whether the Election Commission has got power to alter the date of poll under section 30 of the Act read with section 21 of the General Clauses Act which is undoubtedly applicable in interpretation of the provisions of the Act. We may read section 21 of the General Clauses Act.

Section 21: "Where, by any Central Act or Regulation, a power to issue notifications, orders, rules, or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions if any, to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued".

The Election Commission in this case exercised power under section 30 of the Act and issued the notification appointing the various dates mentioned therein for the purposes specified. Once this power is conferred under section 30 upon the Election Commission, the power to amend the same, which will include alteration of the dates of poll, can be exercised under section 21 of the General Clauses Act. There is, therefore, no merit in the contention that the Election Commission had no power or jurisdiction to alter the date of poll from 3rd March to 9th March, 1971, in the remaining constituencies in this case. Issue No. 2 is, therefore, rightly decided by the High Court although we do not agree with the High Court with regard to the construction of section 153 of the Act. In the view we have taken, it is not necessary for us to consider whether Article 324 can be invoked in this case in aid of the power to alter the date of poll by the Election Commission.

The learned counsel for the appellant also submits that there should have been a fresh notification of the date in form No. 1 under rule 3, read with section 31 of the Act, of the Conduct of Elections Rules 1961. We are, however, not impressed by this submission as the amendment of the date of poll gets engrafted in the original form in pursuance of the subsequent notification dated 2nd March, 1971, made in valid exercise of the power under section 30 of the Act, read with section 21 of the General Clauses Act.

We now turn to issue No. 5 relating to the corrupt practice of bribery defined under section 123(1)(A)(a) of the Act. The case of the appellant with regard to this issue is as follows:—

"At about 7.00 P.M. on 6-3-1971 there was a meeting at the Aligarh residence of K. N. Agarwal (said to be one of the financiers of the B.K.D. Party in the election), which was attended by Shiv Kumar Shastri (respondent No. 1), Pooran Singh Malan (respondent No. 2), Virendra Verma (Home Minister of the then U.P. Government), Surendra Kumar (another alleged financier of the B.K.D. Party), and a number of other persons. One Ania Deo Sharma stood up and made an appeal to Shastri and Malan

- A that only one of them should stand for election and there-  
upon Shastri, Malan and Surendra Kumar went into an ad-  
joining room, where Surendra Kumar offered to pay Rs.  
30,000/- to Rs. 35,000/- to Malan if he would withdraw  
from the contest, while Shastri told Malan that he would  
recommend him for a seat in the Legislative Council. On  
B this Malan said that he had no need of money and as regards  
the seat in the Council, that was for the future to decide, but  
as they were all asking him to withdraw, he would comply.  
The three of them then joined the others and Malan  
announced his withdrawal and requested his supporters to  
transfer their allegiance to Shastri".

- C Before we discuss the evidence, we may deal with a question of  
law addressed by Mr. Hardy, learned counsel for the contesting res-  
pondent. According to the learned counsel, even assuming that any  
gratification was offered to Malan on 6th March, 1971, to induce him  
to refrain from contesting the election, that would not amount to a  
corrupt practice within the meaning of section 123(1)(A)(a) of the  
Act. We may, therefore, read that part of the section :

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

(1) 'Bribery', that is to say,—

- (A) any gift, offer or promise by a candidate or his agent  
or by any other person with the consent of a candi-  
E date or his election agent of any gratification, to any  
person whomsoever, with the object, directly or in-  
directly of inducing—

(a) a person to stand or not to stand as, or to withdraw  
or not to withdraw from being a candidate at an elec-  
tion, or;"

- F The allegation in the present case is that an offer of gratification was  
made to Malan to induce him "to withdraw from being a candidate".  
It is submitted that since the time for withdrawal of candidature had  
already expired, there can be no withdrawal of candidature after the  
date fixed for that purpose in the appropriate notification to come  
within the mischief of section 123(1)(A)(a). It is further submitted  
G that even though he may not have taken any part in the election after  
the expiry of the date of withdrawal, he will remain a contesting can-  
didate throughout the election. It is also pointed out that in fact Malan  
obtained votes in the election which was held on 9th March, 1971 in  
various constituencies as will also appear from the chart given above.  
The learned counsel also drew our attention to the earlier law on the  
subject where a provision under section 123(1)(a) stood as follows :—

- H "a person to stand or not to stand as or to, with-draw  
from being a candidate or to retire from contest, at an  
election;"



Mr. Hardy submits that the words "to retire from contest" are omitted from the present section, which, according to him, is very significant. He, therefore, submits that since Malan could not in law withdraw from the candidature on 6th March, 1971 and there is no question of retiring from the contest under the present law, no corrupt practice has been committed within the meaning of section 123(1)(A)(a).

It is well settled that election under the Act is from the date of publication of the notification calling the election to the date of declaration of the result of the election, both days inclusive. We have, therefore, a terminus a quo and terminus ad quem under the law. The word "candidate" is defined for Part VI (Disputes regarding Elections) and Part VII (Corrupt Practices and Electoral Offences) under Section 79(b) and it means "a person who has been or claims to have been duly nominated as a candidate at any election and any such person shall be deemed to have been a candidate as from the time when with the election in prospect, he began to hold himself out as a prospective candidate". Section 32 provides for nomination of candidates for election. Under section 36(8), "Immediately after all the nomination papers have been scrutinised and decisions accepting or rejecting the same have been recorded, the returning officer shall prepare a list of validly nominated candidates, that is to say, candidates whose nominations have been found valid, and affix it to his notice board". Section 37 provides for withdrawal of candidature within the time specified therein. Section 38 provides for publication of list of contesting candidates, that is to say, candidates who were included in the list of validly nominated candidates and who have not withdrawn their candidature within the said period. The word "contesting candidate" as such is not defined in the Act, but the word "candidate" under rule 50(a) and rule 28(a) of the Conduct of Elections Rules 1961 means a contesting candidate. The question is whether after the time for withdrawal has expired and a list of contesting candidates has been published, withdrawal thereafter from the contest on receipt of bribe will be within the mischief of section 123(1)(A)(a).

We have already set out the material portions of section 123(1)(A) as well as the earlier section to which our attention has been drawn. It is strenuously submitted by Mr. Hardy that the omission of the words "retire from contest" is very significant and the legislature now confines withdrawal under section 123(1)(A)(a) to the stage as envisaged under section 37 and not thereafter. The Shorter Oxford English dictionary gives the meaning of the word "withdraw" (verb intransitive) to go away or retire from the field of battle or any contest. Withdraw or not to withdraw, therefore, includes "retire from contest" or not to retire from contest. There is, therefore, nothing significant etymologically in the deletion of the words "retire from contest". When, therefore, section 123(1)(A) speaks of withdrawal from being a candidate, it is not limited to a candidate who has been validly nominated and who has withdrawn earlier according to law. It is because of this reason that the words "retire from contest" become unnecessary and were advisedly deleted by the legislature.

- A Again looking from another angle, section 123(1)(A)(a) has got two stages; the first stage relates to the period when even before filing of nomination paper a person is contemplating to stand or not to stand as a candidate in the election [see definition of candidate under section 79(b)]. The second stage is reached after filing of the nomination paper when law gives a candidate requisite time to withdraw from the candidature. It is true that the words "to retire from contest" in the
- B old provision are now deleted and the provision is recast by adding the words "not to withdraw" in addition to the words "to withdraw" in the earlier provision. We are, however, unable to hold that the expression "to withdraw or not to withdraw" from being a candidate has only a restricted meaning to be confined to the stage where law permits a candidate to withdraw from the election. For the purpose of section 123 the words "to withdraw or not to withdraw" from being a candidate
- C are of wide amplitude to include a subsequent withdrawal or non-withdrawal even at the last stage prior to the poll.

- We may also consider whether deletion of the aforesaid words makes any difference under the scheme of the Act. "Since purity of elections is the most important object of the Act, a narrow meaning to the word
- D "withdraw" to refer only to legal withdrawal under section 37 would defeat the very aim. We have, therefore, to give a meaning to the word "withdraw" keeping in mind the object and scheme of the Act with a view to effectuate the intention of the legislature to ensure purity in elections; else there will be an absurd position where actual withdrawal after the time limit by taking bribe will be free from the vice of corrupt practice whereas that prior to it will not be so. Such an intention cannot be attributed to the legislature from deletion of the words
- E "retire from contest". The word "withdraw" is comprehensive enough to also connote "retire from contest". We are, therefore, unable to accept the submission that even if the facts alleged be established, there can be no corrupt practice within the meaning of section 123(1)(A)(a) of the Act.

- We will, therefore, deal with the allegations to see how far they are
- F established on the evidence. We have already set out the allegations with regard to this issue and the first respondent has denied all the allegations. His case is that no bribe was offered nor any promise made to Malan and in actual fact Malan did not withdraw from the contest and continued to fight the election to the end. The solitary witness who claims to have been present when the offer of gratification was made is Devendra Pal Singh (P.W. 20). This witness claims to have been one of the workers of the first respondent and indeed proposed Shastri's nomination. He changed his allegiance from one party to another, namely, from the B.K.D. to the Congress (R) in September 1971. We are unable to hold that the High Court is wrong in not placing reliance upon his evidence. The High Court has also found the corroborating evidence equally unreliable. Since we agree with the appreciation of the evidence of the witness by the High Court with regard to this charge, we may only briefly allude to the other evidence to demonstrate its unreliability. Radha Raman Dhvaj Prasad Singh (P.W. 21) was examined to support these allegations. He has
- G been a B. K. D. worker since 1969 and he claimed also to be in that
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party on the date (12-12-1971) he gave evidence for the appellant. He admits to have worked for the first respondent in 1971 election. Although he did not depose to the entire episode and did not go into the room where the discussion took place with regard to the bribe and the promise of a seat in the Council, he stated that Malan announced that he was withdrawing in favour of Shiv Kumar Shastri and told his workers to see that Shastri was successful. He admits to have taken loan from the Aligarh Cooperative Bank at a time when Devendra Pal Singh (PW 20) was the Chairman of the Bank. He has not received any recovery notice. This witness has also changed his loyalty for reasons best known to him and cannot be considered as a reliable witness in an election matter where one may not fail to come across truth being sacrificed at the altar of political expediency. The next witness is Shashi Bhushan (P.W. 32). He has been a Member of Parliament since 1967. He went to Aligarh on 7th March, 1971, to help the appellant in his election. He met Pooran Singh Malan on 7th March, 1971, in Aligarh. He asked him why he was withdrawing from the election since he had read about this in an Agra newspaper called "Amarujwala", which, however, has not been produced. According to his evidence, Malan told him that the atmosphere had changed since the communal riots and the grand alliance which had been supporting him was no longer supporting him. He further stated to this witness that he had been promised a seat by Shiv Kumar Shastri in the Legislative Council. He further stated that he was going to a meeting of Shastri to announce his withdrawal. This evidence is absolutely improbable in view of P.W. 21's statement that Malan had announced his withdrawal on the previous day, viz., 6th March, 1971. It is not easy to comprehend why Malan should have at all exposed himself to unsavoury comments and other consequences by stating to this witness in the manner he is alleged to have done. We cannot say that the High Court has wrongly rejected the testimony of P.W. 32. Another witness is Anand Pal (P.W. 10) who attended, according to him, certain meeting at Gordha Bazar on 7th March, 1971. He deposed to the effect that Kalyan Singh was addressing the meeting and Kalyan Singh while addressing the meeting said, "he had got Pooran Singh Malan to withdraw", so that all Hindus could unite to vote for a Hindu. Shiv Kumar Shastri also repeated the same things. He said he was a staunch Hindu and they should vote for him and he had got Malan to stand down". It is difficult to believe that the first respondent would expose himself in such an open manner by stating in public that "he had got Malan to stand down". This was not at all necessary to state. Such a serious charge cannot be established on mere statement of this kind. Gajendra Singh (P.W. 18) is another witness to depose about the withdrawal of Malan amongst other things. He is a member of B.K.D. Party and was a polling agent of Mrs. Gyatri Devi (wife of Sri Charan Singh) in 1967. In 1971 Parliamentary election he worked for the first respondent and yet he went against him to depose against his interest. It is difficult to place any reliance upon such a witness and the High Court has rightly rejected his testimony. Kishan Singh (P.W. 23) also deposed that he was present in a meeting at Iglas on 7th March, 1971 and he heard Jogendra Pal Singh, election agent of the first respondent, speaking in the meeting to the effect, amongst other things, "that Malan had been made to withdraw and votes should

- A now go to Shastri who was of Charan Singh's party". This is not at all direct evidence about the allegations which are made by the appellant to support the charge. Ram Das Singh (P.W. 19) was also examined with reference to this charge. His evidence too is not direct on the point and cannot be held to be at all helpful in establishing the charge. On the side of the respondents, the allegations have been denied by Virendra Varma (R.W. 7) and also by Mahendra Singh (R.W. 3). In view of the nature of the evidence on the side of the appellant it is not even necessary to refer in detail to the respondent's evidence.

- A grievance was made by the learned counsel for the appellant that a petition was made by the appellant for examination of additional witnesses and the High Court wrongly rejected the same. We find from the order of the High Court that the party had been warned that "any proposed addition to the list of witnesses would have to be justified".
- C The High Court found that beyond saying that their names were left out "by inadvertence or oversight" no other sufficient ground was given by the appellant to justify his prayer. We, therefore, do not find any justification for the grievance on this score. Another petition was also filed by the appellant on 18th November, 1971, for examination of Pooran Singh Malan (respondent No. 2) as a witness. The High Court rejected the prayer on the ground that his name did not figure in the list of witnesses supplied on 9th November, 1971. Since Malan is a respondent, who on the proof of the averments could have been named under section 99, the appellant cannot make a grievance for rejection of his prayer. It is not possible for this Court to interfere with the discretion exercised by the learned trial Judge in a matter like this.

- E We now come to issue No. 7. This issue is with regard to the corrupt practice of undue influence under section 123(2) of the Act. The allegations are that on 7th March, 1971, two days before the poll, the first respondent visited the village of Sapera and after collecting a number of Hindus at the chaupal of the Sarpanch, Hukum Singh, went, along with them to the Muslim quarter of the village and by means of threats forced the Muslim voters of that place to swear by the Quran
- F that they would vote for him and not for the appellant or any other candidate. After the Muslims had taken the oath, Shastri is alleged to have warned them that if they did not act in accordance with the oath, they would be in danger of divine displeasure. The witnesses examined by the appellant for establishing this charge are Raghbir Singh (PW 11), Rafiq (PW 14) and Sheodan Singh (PW 15). These witnesses are residents of Sapera. Both PWs 11 and 15 admit that they are supporters of the Congress and were supporting the Congress in the election but claim that on account of Shastri's visit to the village on 7th March, 1971, they turned over to him. Even then they have come forward to give evidence against Shastri in this case. The High Court has given cogent reasons for discarding their testimony and we are unable to take a contrary view. P.W. 14, Rafiq, is also undependable. Although he spoke about the swearing by the Quran at the mosque, he did not know the name of the Mulla. He has no opinion of his own and admitted that when asked by Shastri and others he told that he would vote "as they directed". Finally he did not go to vote

on the day of poll. Besides, their statements are satisfactorily rebutted by the evidence of the first respondent, R.W. 1, Giraj Singh and R.W. 8 Hari Singh, the polling agent of the first respondent. We are satisfied that the High Court has correctly appreciated the testimony of these witnesses with regard to this charge.

We will now deal with issues Nos. 8, 8A, 9, 10 and 11.

These issues are interconnected and relate to the allegations made in paragraphs 29, 30 and 34 of the election petition. They refer to a number of meetings held at various places, namely, Gordha, Iglas, Jatari, Gaghana and Beswa, on 7-3-1971 and 8-3-1971, at which speeches were made either by the first respondent or by his agents and supporters. Since we agree with the conclusions reached by the High Court with regard to the proof of the various allegations, we do not propose to deal exhaustively with the evidence and only make a brief reference to some broad features.

*Meeting at Gordha :*

The allegations are that on 7th March, 1971, in village Gordha in the afternoon at weekly bazar, Kalyan Singh, M.L.A., addressed a huge gathering in the following terms :—

"In Aligarh Muslims at the instance of the petitioner have chopped off the breasts of the Hindu women and have inflicted bodily injuries. Now I ask every Hindu who is present in this gathering : Are you so shameless to vote for a Muslim candidate?" He posed a question that you are the descendants of Shivaji and Rana Pratap and you should see that the butcher miyan (i.e. the petitioner) is defeated. He also said that for this purpose only we got Shri Pooran Singh Malan, respondent No. 2, to withdraw his candidature so that Hindu votes may not be divided and a Muslim candidate may not win the election".

It is further stated in paragraph 20 of the petition that "the first respondent was also present from the very beginning at the meeting and he also addressed the gathering supporting Kalyan Singh and requested them to vote for him as he was a Hindu and that they should not vote for the petitioner who was a Muslim butcher, whose members of the community butchered the innocent Hindus and looted their properties in Aligarh city". To establish the charge the appellant examined Kesho Deo Haryana (PW 6), Khacheru Lal (PW 8), Subedar Singh (PW 9) and Anand Pal (PW 10). The first respondent examined himself (RW 14), Nem Singh Chauhan (RW 5) and Jaipal Singh (RW 6).

*P. W. 6 (Kesho Deo Haryana) :* He is a counting agent of the appellant and was working for him. He is a Congress (R) worker. He does belong to Gordha village. He went there for propaganda work for the appellant. Though he claims that he was present at the meeting held at Gordha on 7th March, 1971, and that offensive speeches were made by Kalyan Singh and the first respondent at the meeting, he deposed to the following effect :—

- A "I sent no written report about the speeches to the authorities. I made no written report to any one. I merely reported orally to our President... He made a note in a file".

Such a file was not produced to corroborate his testimony.

- B P.W. 8 (*Khacheru Lal*) : He does not belong to Gordha; his village is two miles from Gordha. He states that there is a Sunday market in Gordha and that he attended the meeting held there on 7-3-1971. He did not attend any other meeting. He has further stated that he does not know how many candidates were contesting the election. He even does not know which party Pooran Singh Malan, respondent No. 2, was representing, though he alleges that Kalyan Singh in his speech at the said meeting *inter alia*, said "he had got Malan to withdraw".
- C He could not also name the parties whose representatives had gone to his village in connection with votes; nor could he give the name of any one who went there to carry on propaganda.

- D P. W. 9 (*Subedar Singh*) : He states that he attended meetings at Kashipur Power House and at Nawala, but could not remember the dates of these meetings. Although he stated that only Bir Pal Singh made a speech at the Kashipur meeting, he could not reproduce what Bir Pal Singh had said in the course of his speech. He gave the same pattern of evidence with regard to the Nawala meeting and could not give any idea about the speech that Kesho Deo Haryana made there. He did not make any notes of the speeches at Gordha meeting and did not report to any one about it.

- E P. W. 10 (*Anand Pal*) : He states that he made no written report about the Gordha meeting, nor did he make any notes about the meeting. He was asked by Babu Lal, former Chairman of the Municipal Board of Aligarh and an active Congress (R) worker, to give evidence. He gave him his ticket at the railway station and told him that he could stay in the Congress office.

- F These allegations have been denied by R. W. 14 (the first respondent), R.W. 5 (Neem Singh Chauhan) and R.W. 6 (Jaipal Singh) as will appear from their evidence which we have closely examined.

#### *Meeting at Iglas*

- G The appellant's case is that a meeting was held at Iglas at the Jawahar Inter College at 8.00 A.M. on March 7, 1971. He examined Gajendra Singh (P.W. 18) and Ram Das Singh (P.W. 19), Kishan Singh (P.W. 28) and Brij Lal Sharma (P.W. 31). P.Ws. 18 and 19 were the active workers of the B.K.D. party yet they deposed that on hearing the allegations against Yunus Saleem and the Muslims of Aligarh they changed their minds and worked day and night for the success of the first respondent. Even at the time of giving evidence they claimed to be in favour of the B.K.D. party, yet came forward to give evidence against the successful B.K.D. candidate. Kishan Singh (PW 23) is a member of the Aligarh District Congress Committee and claims to have gone to the meeting organised by the rival party in order to find out what was being said. He, however, made no report about the unlawful propaganda being carried on at this meeting to the election
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authorities. He was conscious that this meeting held within 48 hours of the time fixed for the closing of the poll was an illegal one, yet he made no report to the authorities about this. Brij Lal Sharma (P.W. 31) is also a supporter of the Congress (R). Even he did not make any report to any one about what he had heard in the meeting. The High Court has observed that "the unreliability of the petitioner's allegations regarding this alleged Iglas meeting stands further more revealed by the discrepancy between the testimony of these witnesses and the details given in the statement of further particulars filed by the petitioner on 26-8-71". It is also, disclosed in the further particulars "that among those who addressed the meeting held in Iglas at 8.00 P.M. on 7-3-1971 was Chaudhary Charan Singh, but none of four witnesses deposes to Chaudhary Charan Singh's participation in the meeting and from the statement of Brij Lal Sharma it is clear that Chaudhary Charan Singh did not attend it". As against this, we have the evidence of Ramesh Chandra (R.W. 10) and Virendra Varma (R.W. 7) who deposed denying the allegations. Virendra Varma (R.W. 7) who was then the Home Minister of U.P. frankly admitted that he had been to Iglas on 7-3-1971 in order to meet the B.K.D. workers of those places and not hold any public meeting or to make any electioneering speeches. The High Court has accepted his testimony and we have no reason to disagree with the conclusions reached by the High Court with regard to these allegations being not established against the first respondent.

*Meetings at Jatari, Gabhana and Beswa :*

It is also alleged in the further particulars filed by the appellant in the High Court on 26-8-1971 that a meeting was held at Jatari at 10.00 A.M. on 7-3-1971. The appellant examined Bed Vir Singh (P.W. 16) and Govardhan Singh (P.W. 17) to establish the allegations with regard to the speeches made by Mahendra Singh (R.W. 3), Yogendra Pal Singh and Virendra Varma (R.W. 7). There was also another meeting at Gabhana Village at 11.00 A.M. on 8-3-1971 at which speeches were said to have been made by the first respondent and Prakash Vir Shastri, General Secretary of the B.K.D. The appellant's witnesses with regard to this meeting are Raj Kumar Singh (P.W. 24), Ombir Singh (P.W. 25), Chetanya Raj Singh (P.W. 26) and Dev Dutta Bhardwaj (P.W. 29). To refute allegations made by these witnesses, the first respondent examined himself (R.W. 14), Jodhi Pal Singh (R.W. 11) and Raghunath Prasad Sharma (R.W. 12). A meeting was also held, according to the appellant, in the village of Beswa on 8-3-1971 at 12.30 P.M. at which Pooran Singh Malan, Yogendra Pal Singh and Virendra Varma are said to have made objectionable speeches. Evidence was led by the appellant with regard to this meeting by examining Radha Raman Dhawaj Prasad Singh (P.W. 21) and Harcharan Lal (P.W. 22). Virendra Varma (R.W. 7) and Virendra Singh (R.W. 9) denied the allegations. The first respondent also produced rebutting evidence with regard to each of these alleged meetings.

We have examined the evidence in regard to each of the aforesaid meetings. The High Court after a correct appreciation of the evidence

- A** led by the appellant came to the conclusion that the evidence produced by the respondent has to be preferred and held that allegations and imputations alleged to have been made in these meetings were not established. We have been taken through the evidence by the learned counsel for the appellant and we are unable to hold that another view with regard to the oral testimony of the appellant's side is even possible in this case. Although we have referred to the evidence with regard
- B** to two meetings earlier in the judgment, we do not propose to restate the evidence and the improbabilities again since we are in complete agreement with the conclusions with regard to all these charges reached by the High Court.

- C** In view of the nature of the evidence led by the appellant with regard to these meetings and its refutation by the witnesses of the first respondent, we have no reason to differ from the High Court's conclusion that the allegations have not been established.

- D** In the matter of appreciation of oral testimony in an election dispute, this Court in an appeal under section 116A must have convincing and clinching reasons to take a contrary view from that of the High Court. It is not enough that another view is merely possible to take on the oral evidence. Strict proof of the allegations is called for and the High Court has, in our opinion, rightly declined to accept the oral evidence of the appellant's side and rightly preferred that of the respondent's side. We do not feel at all justified in this case to take a contrary view. We, therefore, hold that Issues Nos. 8, 8A, 9, 10 and 11 are correctly decided by the High Court. We have no hesitation to hold that the election petition was rightly dismissed. As for Issue
- E** No. 12, it is a consequential issue and in the view we have taken in the foregoing discussion it was rightly decided against the appellant. We hold that no corrupt practice has been proved to have been committed by the first respondent under section 123(1), (2), (3), (3A) and (4) of the Act.

In the result the appeal fails and is dismissed with costs.

V.P.S.

*Appeal dismissed.*