

(1972) 02 AHC CK 0040

Allahabad High Court

Case No: Election Petition No. 1 of 1971

Brahma Dutt

APPELLANT

Vs

Paripurna Nand Family and
Others

RESPONDENT

Date of Decision: Feb. 14, 1972

Acts Referred:

- Constitution of India, 1950 - Article 102(1)
- Representation of the People Act, 1951 - Section 100(1), 123, 123(3), 123(3A), 9A

Citation: AIR 1972 All 340

Hon'ble Judges: B.N. Lokur, J

Bench: Single Bench

Advocate: Shanti Bhushan and M.C. Gupte, for the Appellant; S.N. Misra, K.C. Dhuliya, S.N. Doval, N.C. Tewari, Urmila Tewari and S.K. Mukerji, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

B.N. Lokur, J.

Respondents Nos. 1 to 6 as well as Rajmata Kamalendumati Shah and Lokendra Dutt Saklani filed nomination papers for the mid-term general elections to the Lok Sabha from Tehri Garh-wal Constituency (hereinafter referred to as "the Constituency") held in February/ March, 1971, Rajmata Kamalendumati Shah and Lokendra Dutt Saklani withdrew their candidature before the date of withdrawal and respondents Nos. 1 to 6 alone contested the election. Respondent No. 1 was returned elected and the petitioner, a voter in the Constituency, has challenged his election. He has also prayed for a declaration that respondent No. 2 is duly elected.

2. It may be mentioned that respondent No. 1 is the proprietor of the newspaper Himani, published at Dehra Dun, which is outside the Constituency, and respondent No. 2 is the Ruler of Tehri.

3. The petition is resisted by respondent No. 1, while respondent No. 2 has supported the petition. Respondents Nos. 3 to 6 remained absent though duly served and were proceeded against ex parte.

4. The calendar of election for the Constituency was as follows:--

3rd February, 1971 : Last date of nominations.

5th February, 1971 : Date of scrutiny of nominations.

6th February, 1971 : Date of withdrawal of nominations.

1st March and 5th March, 1971 : Dates of poll.

10th and 11th March, 1971 : Dates of counting of votes.

11th March, 1971 : Date of declaration of results.

5. Respondent No. 1 has opposed the petition on several grounds and on the pleadings the following issues were framed:--

1. Whether the petitioner was an elector in the Tehri-Garhwal Parliamentary Constituency for the general election to the Lok Sabha held in February-March, 1971?

2. Whether Rajmata Kamalendumati Shah and Lokendra Dutt Saklani, who had filed valid nomination papers, are necessary parties to this petition even though they had withdrawn their candidature?

3. Whether the deposit of the sum of Rs. 2000/- as security for costs of the petition has not been made by the petitioner in accordance with the provisions of Section 117(1) of the Representation of the People Act, 1951?

4. (i) Whether respondent No. 1 was a representative correspondent of the All India Radio under the Ministry of Information and Broadcasting of the Government of India, posted at Dehradun and drawing a remuneration in that capacity, on the date of scrutiny of the nomination papers (5th February, 1971) and/or on the date of his election (11th March, 1971)?

(ii) If so, whether on either of the said two dates, respondent No. 1 was holding an office of profit under the Government of India and was on that ground disqualified to be chosen as a member of the Lok Sabha?

(iii) Having regard to the findings on (i) and (ii) above, whether the nomination of respondent No. 1 was improperly accepted and the result of the election, in so far as it concerns him, was materially affected by the improper acceptance of his nomination?

(iv) Having regard to the findings on (i), (ii) and (iii) above, whether the election of respondent No. 1 is void u/s 100(1)(a) and/or Section 100(1)(d)(i) of the

Representation of the People Act, 1951?

5. (i) Whether all or any of the advertisements appearing in the issues of respondent No. 1's newspaper "Himani", referred to in paragraphs 14 to 16 of the Petition, copies whereof are at Annexures 3 to 7 to the petition, were published under contracts entered into by respondent No. 1 with the Government of India?

(ii) Whether the said contracts or any of them were for the execution of any works undertaken by the Government of India within the meaning of Section 9-A of the Representation of the People Act, 1951?

(iii) Whether the said contracts or any of them were subsisting on the date of scrutiny of the nomination papers (5th February, 1971) and/or on the date of respondent No. 1's election (11th March, 1971)?

(iv) Having regard to the findings on (i), (ii) and (iii) above, whether respondent No. 1 was disqualified to be chosen as a member of the Lok Sabha on either of the aforesaid dates?

(v) Having regard to the finding on (iv) above, whether the nomination of respondent No. 1 was improperly accepted and the result of the election, in so far as it concerns him, was materially affected by the improper acceptance of his nomination?

(vi) Having regard to the findings on (iv) and (v) above, whether the election of respondent No. 1 is void u/s 100(1)(a) and/or Section 100(1)(d)(i) of the Representation of the People Act, 1951?

6. (i) Whether the three articles appearing in the issues of respondent No. 1's newspaper "Himani", referred to in paragraphs 20 and 21 of the Petition, copies whereof are at Annexures 8, 8A and 9 to the petition, are of the authorship of respondent No. 1 and/or were published by him. If not, whether Shyam Chand Negi and "Khandar Nivasi" whose names appear therein as the authors thereof, published the articles with the consent of respondent No. 1?

(ii) Whether the newspaper "Himani" had circulation in the constituency at the time of the elections in question?

(iii) Whether copies of the said issues of "Himani" containing the said articles were distributed and circulated to the Rajput voters in the constituency by Respondent No. 1, and, with his consent, by persons mentioned at serial Nos. 1 to 4 in Schedule I to the petition at the places specified therein?

(iv) Whether the said articles contain an appeal to the Rajput voters of the constituency to refrain from voting for respondent No. 2 on the ground of his caste and community, for the furtherance of the prospects of the election of respondent No. 1 or for prejudicially affecting the prospects of respondent No. 2's election?

(v) Whether the articles at Annexures 8A and 9 to the petition promote or attempt to promote feelings of enmity or hatred between the Rajput community to which respondent No. 2 belongs and the Rajputs in general on grounds of caste and community, for the furtherance of the prospects of the election of respondent No. 1 or for prejudicially affecting the prospects of respondent No. 2's election?

(vi) Having regard to the findings on (i), (ii), (iii), (iv) and (v) above, whether respondent No. 1 and/or, with his consent, the persons mentioned at serial Nos. 1 to 4 in Schedule I to the petition committed corrupt practice within the meaning of Section 123(3) and/or Section 123(3A) of the Representation of the People Act, 1951, and the election of respondent No. 1 is on that ground void u/s 100(1)(b) of that Act?

7. (i) Whether the news item appearing in the issue of respondent No. 1's newspaper "Himani" referred to in paragraph 28 of the petition, a copy of which is at Annexure 10 to the petition, was published by respondent No. 1?

(ii) Whether copies of the said issue of "Himani" were distributed and circulated to the voters in the constituency by respondent No. 1 or, with his consent, by the persons mentioned in Schedule I to the petition at the places specified therein?

(iii) Whether the statement in the said news item indicating that respondent No. 3 had withdrawn from the election contest is false and respondent No. 1 either believed it to be false or did not believe it to be true?

(iv) Whether the said statement was reasonably calculated to prejudice the prospects of respondent No. 3's election?

(v) Having regard to the findings on (i), (ii), (iii) and (iv) above and on (ii) of issue No, 6 above, whether respondent No. 1 and/or, with his consent, the persons mentioned in Schedule I to the petition committed corrupt practice within the meaning of Section 123(4) of the Representation of the People Act, 1951, and the election of respondent No. 1 is on that ground void u/s 100(1)(b) of that Act?

8. (i) Whether the news item and the articles appearing in the issue of respondent No. 1's newspaper "Himani"? referred to in paragraphs 32 and 33 of the petition, copies whereof are at Annexures 10A and II to the petition, are of the authorship of respondent No. 1 and were published by him. If not, whether Mangal Singh Bhan-dari, whose name appears in the said article as its author, published the article with the consent" of respondent No. 1?

(ii) Whether copies of the said issue of "Himam" were distributed and circulated to the voters of the constituency by respondent No, 1 or, with his consent, by persons mentioned at serial Nos. 1 to 4, in Schedule I to the petition at places specified therein?

(iii) Whether the said news item and articles contain statements in relation to the personal character or conduct of Respondent No. 2, or in relation to his candidature,

reasonably calculated to prejudice the prospects of his election?

(iv) Whether the said statements are false and Respondent No. 1 either believed them to be false or did not believe them to be true?

(v) Having regard to the findings on (i), (ii), (iii) and (iv) above and on (ii) of issue No. 6, whether Respondent No. 1 and/or, with his consent the persons mentioned at serial Nos. 1 to 4 of Schedule I to the petition, committed corrupt practice within the meaning of Section 123(4) of the Representation of the People Act, 1951, and the election of Respondent No. 1 is on that ground void u/s 100(1)(b) of the Representation of the People Act, 1951?

9. (i) Whether Respondent No. 1 made appeals amongst the Rajputs in the Constituency on the 2nd February, 1971, near the office of the District Election Officer in Nagendranagar and by meeting the voters individually in each Mohalla at Nagendranagar between 10 a. m. and 9 p. m. on the basis of caste and community and on the lines of the articles referred to in issue No. 6 promoting feelings of hatred and enmity between different classes of the citizens with a view to further the prospects of Respondent No. 1 and to prejudice the prospects of Respondent No. 2, as alleged in Paragraphs 36 and 37 of the petition?

(ii) If so, whether Respondent No. 1 has committed a corrupt practice u/s 153-A of the Representation of People Act, 1951?

10. Having regard to the findings on issues Nos. 3 to 9-

(i) whether the petitioner is entitled to a declaration that the election of Respondent No. 1 is void?

(ii) Whether the petitioner is entitled to a further declaration that Respondent No. 2 is duly elected?

11. What orders? Issues Nos, 1 to 3 were heard as preliminary issues and the findings thereon have been recorded in favour of the petitioner for the reasons, set out in paper No. A-95. The remaining issues are considered here-under seriatim: Issue No. 4:

6. The case of the petitioner is that respondent No. 1 was holding an office of profit under the Government of India as representative correspondent of the All India Radio at Dehra Dun on 5th February, 1971, the date of scrutiny of nomination papers, as well as on 11th March, 1971, the date of election; that hence the nomination of respondent No. 1 was improperly accepted and the improper acceptance of the nomination paper materially affected his election, rendering it void u/s 100(1)(d)(i) of the Act; that his election is also void as he was disqualified on the date of his election u/s 100(1)(a) of the Act read with Article 102(1)(a) of the Constitution.

7. Dr. A.R. Baji, Director of News Service, All India Radio, P. W. 1, has deposed to respondent No. 1 having been a Staff Artist/Part Time Correspondent of the All India Radio at Dehra Dun on the material dates. According to him, respondent No. 1 was employed as a Part Time Correspondent on casual basis originally from the 7th December, 1963, to 31st August, 1965, but on the 1st September, 1965, respondent No. 1 was working as a Staff Artist/Part Time Correspondent under a contract which was renewed annually, the last renewal of the contract being upto the 31st May, 1971. Respondent No. 1 was being paid a fee per month for the stories sent by him to the All India Radio. He has stated that the contract was terminated unilaterally by the All India Radio with effect from 18th March, 1971, on respondent No. 1 becoming a Member of Parliament although respondent No. 1 did not formally submit his resignation. I do not see any reason to disbelieve the testimony of Dr. Baji and I hold that respondent No. 1 was serving as a Staff Artist/Part Time Correspondent of the All India Radio under the Government of India.

8. Dr. Baji has also produced the last agreement said to have been executed between the All India Radio and respondent No. 1 but I am not satisfied that the signature of respondent No. 1 on the agreement has been duly proved and hence the agreement, which is at P. Paper No. 1, is not exhibited. The petitioner has sought to prove the signature of respondent No. 1 on the agreement but I hesitate to accept his statement as he claims to have seen respondent No. 1 signing once or twice only and he does not appear to be familiar with the signature of respondent No. 1.

9. The question which is hotly agitated is whether the employment of respondent No. 1 by the All India Radio as a Staff Artist/Part Time Correspondent would be an office of profit within the meaning of Article 102(1)(a) of the Constitution. It was urged by Sri S.N. Misra, learned counsel for respondent No. 1, that the employment of respondent No. 1 under the All India Radio cannot be characterised as an "office" while Sri Shanti Bhushan, appearing for the petitioner, canvassed the opposite view. A number of cases of the Supreme Court and of some High Courts were cited in support of the respective propositions but reference need be made to the latest decision of the Supreme Court in [Srimati Kanta Kathuria Vs. Manak Chand Surana](#), The question for consideration of then: Lordships was whether Smt. Kanta Kathuria, who was functioning as Special Government Pleader for the Government of Rajasthan at the time of her election to the State Assembly, was holding an office of profit under the Government of Rajasthan and was, therefore, disqualified to be chosen as a Member of the State Assembly. Though the Bench was divided in its final view, both the majority judgment and the minority judgment were agreed on the exposition of the term "office" by Justice Rowlatt in *Great Western Rly. Co. v. Bater* (1922) 8 TC 231. According to Justice Rowlatt, an office was "a subsisting, permanent substantive position which had existence independent from the person who filled it which went on and was filled in succession by successive holders" and where a man was engaged on whatever terms to do duties which were assigned to

him, his employment to do those duties did not create the office to which those duties were attached. The majority judgment held that Smt. Kanta Kathuria did not hold an office of profit. Applying the definition of "office" propounded by Justice Rowlatt, I am inclined to the view that the engagement of respondent No. 1 as a Staff Artist/Part Time Correspondent does not amount to his appointment to an "office". The duties of the Part Time Correspondent were assigned to respondent No. 1 in his individual capacity for the time being. It is significant that after the termination of the employment of respondent No. 1 on the 18th March, 1971, no one has been employed as a Part Time Correspondent in the All India Radio at Dehradun till now, in other words, there is no continuity of the position and no succession. The majority judgment in [Srimati Kanta Kathuria Vs. Manak Chand Surana](#), observed that "there must be an office which exists independently of the holder of the office"; in the present case after the exit of respondent No. 1, he is not replaced by any one and the position of a Part Time Correspondent in Dehradun apparently came to an end; it had no existence independent of respondent No. 1. The learned counsel for the petitioner urged that an office may be kept vacant and the existence of the vacancy does not militate against the existence of the office itself. It is hard to believe that the vacancy of a correspondent, if one exists, is allowed to remain vacant for more than eight months. Reliance was placed for the petitioner on the decision of the Supreme Court in Civil Appeal No. 1832 (N. C. E.) of 1967 (SC) (Mahadeo v. Shantibai, decided on 15-10-1968), but that decision has been noted and distinguished in [Srimati Kanta Kathuria Vs. Manak Chand Surana](#), and is distinguishable from the facts and circumstances of the present case. I hold that the employment of respondent No. 1 as a Part Time Correspondent is not to an office. I may, however, mention that if the employment of respondent No. 1 were to be an office, it would without doubt be an office of profit as fees were paid to respondent No. 1 in return for the service rendered regularly every month.

10. An attempt was made for respondent No. 1 to defeat the case of the petitioner on another ground, namely, that the petition mentions that respondent No. 1 was a representative Correspondent of the All India Radio but a new case was made out at the hearing that he is a Staff Artist/Part Time Correspondent. To my mind, a Part Time Correspondent is also a representative Correspondent--a correspondent representing the All India Radio and hence I am not impressed by this argument. Dr. Baji has stated that there is nothing like a "representative correspondent" of the All India Radio.

11. Since, in my opinion, respondent No. 1 was not holding an office of profit under the Government of India by reason of his employment as a Staff Artist/ Part Time Correspondent, he was not disqualified for being chosen as a Member of Parliament, nor was his nomination paper improperly accepted. The petitioner must fail on this issue.

12. Respondent No. 1 is admittedly the proprietor, printer and publisher of a newspaper entitled Himani which is printed and published at Dehradun. It is proved by the evidence of R.N. Chaddha, Assistant Media Executive in the Directorate of Advertising and Visual Publicity, New Delhi, and it is also not denied by respondent No. 1 in his written statement, that the Directorate of Advertising and Visual Publicity was releasing some advertisements of the Directorate in the Himani newspaper. The petitioner contends that both on the dates of his nomination and his election, respondent No. 1 had a subsisting contract with this Directorate, which is an organisation of the Government of India, made in the course of his business as a printer and publisher of his newspaper and this contract being about the execution of the works undertaken by the Government of India, respondent No. 1 was disqualified to be chosen as a Member of the Lok Sabha u/s 9-A of the Act. The petitioner has produced at Annexures 3, 4 and 5 to the petition copies of advertisements said to have been released by the said Directorate and published in the Himani on 2nd February, 1971, 13th February, 1971 and 23rd March, 1971. The issues of Himani in which these advertisements are said to have been published have not been produced. According to R.N. Chaddha, seven advertisements were released for publication in Himani between the 1st January 1971 and 80th April, 1971, and he has spoken to five of them having been published on the 10th January, 1971, 17th January, 1971, 19th January 1971, 2nd February, 1971 and 23rd February 1971. In the absence of the relevant issues of the newspaper Himani, and in the light of the evidence of R.N. Chaddha, I am unable to hold that any advertisements issued by the Directorate of Audio Visual Publicity were published in the Himani on the 13th February, 1971, and 23rd March, 1971, as in Annexures 4 and 5.

13. According to R.N. Chaddha, advertisements were released for publication in Himani under a rate contract. He has produced at P. Paper No. 5 an office copy of a communication sent to the publisher of Himani inviting him to publish advertisements of the Directorate between 1st April, 1970 and 31st March, 1971. Enclosed with the communication was a form of rate contract to be signed by the publisher; R.N. Chaddha has said that P. Paper No. 6, which is in the form enclosed with P. Paper No. 5, was received from Himani. P. Paper No. 5 is signed by Harnam Singh, Media Executive for Director of Advertisement and Visual Publicity, and his signature is proved by R.N. Chaddha. It is hence exhibited as Ex. P-14. Although the signature of respondent No. 1 on P. Paper No. 6 has not been proved, except by the doubtful evidence of the petitioner himself, it has been exhibited as Ex. P-15 as it had been received by the Directorate in answer to P. Paper No. 5 (vide Explanation to Section 47 of the Indian Evidence Act). In view of these two documents, I am satisfied that there was a rate contract between the Directorate of Advertisement and Visual Publicity and respondent No. 1 as Managing Editor of Himani for publication in the Himani of advertisements released by the Directorate. It is also clear from these two documents that the contract was from 1st April, 1970 to 31st March, 1971, and included the period for the election under consideration.

Respondent No. 1 had thus a subsisting contract with a Government organisation on the material dates for printing advertisements of the organisation.

14. The crucial question, however, is whether this is a contract for execution of works undertaken by the Government of India. Sri Shanti Bhushan argued that advertising by the Government of India was a work and that work was executed by respondent No. 1 through his newspaper Himani. He relied in support of this argument on a decision of the Supreme Court in [Mahendra Kumar Vs. Sm. Vidyavati and Others](#), wherein a candidate who held contracts with the Government of Vindhya Pradesh at the material dates for printing of electoral rolls was held to be disqualified from being chosen to the Legislative Assembly. This case, however, was decided with reference to Section 7(d) of the Act as it stood prior to the amendments of the Act in 1958 and in 1966. Section 7(d) of the Act then read as follows:

"7. A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State-

(d) if, whether by himself or by any person or body of persons in trust for him or for his benefit or on his account, he has any share or interest in a contract for the supply of goods to, or for the execution or any works or the performance of any services undertaken by, the appropriate Government;"

Their Lordships have not stated that printing of electoral rolls for the Government of Vindhya Pradesh was the execution of any works and it appears to me that presumably their Lordships were of the view that printing of electoral rolls was performance of a service undertaken by the Government. In my opinion, this decision is of no assistance to the petitioner.

15. In [Satya Prakash Vs. Bashir Ahmed Qureshi](#), a Division Bench of the Madhya Pradesh High Court held that a contract with the Central Government for the carriage of mail bags and postal articles is not a contract for the execution of any works undertaken by the Central Government. It was observed:

"The expression "execution of any works" means and implies the carrying out of some act or acts or course of conduct to the commencement and completion of the works. It is of significance that in Clause (d) the word used is not the singular "work" but the plural "works". The plural is always used in the sense of "operations" "projects", "scheme", "plan", such as building works, irrigation works, defence Works etc. "Any work" no doubt conveys the meaning of "any task or job or activity and the "execution of any work" may mean the carrying out of any task or job or the undertaking of any activity. But this wide import disappears in the expression "any works". In the context in which the words execution of any works" have been used, what is connoted is the carrying out of something to be built or constructed and not merely something to be done."

This view has been adopted by a Division Bench of the Patna High Court in [Yugal Kishore Sinha Vs. Nagendra Prasad Yadav](#), and I also respectfully follow that view. Since advertisement for the Government would not, on this view fall within the expression "execution of any works", I must conclude that respondent No. 1 was not disqualified for being chosen as a Member of the Lok Sabha u/s 9-A of the Act. Finding accordingly.

Issue No. 6:

16. The petitioner alleges that respondent No. 1 had published in the Himani three articles, copies whereof are at Annexures 8, 8-A and 9, and that these articles contained an appeal to the Rajput voters of the constituency to refrain from voting for respondent No. 2 on the ground of his caste and community for the furtherance of the prospects of election of respondent No. 1 and for prejudicially affecting the prospects of the election of respondent No. 2. He has further alleged that the articles at Annexure 8-A and 9 promoted or attempted to promote feelings of enmity or hatred between the Rajput community to which respondent No. 2 belongs and the Rajputs in general on grounds of caste and community with a similar object. According to the petitioner, Himani newspaper had circulation in the constituency during the election period and the issues containing these articles were also distributed in the Constituency by respondent No. 1, and with his consent by persons mentioned at serial Nos. 1 to 4 in Schedule 1 to the petition at the places specified therein. The consequence of the publication of these articles and circulation of the issues containing the articles in the Constituency is, the petitioner avers, that respondent No. 1 and, with his consent, the persons mentioned at serial Nos. 1 to 4 in Schedule I to the petition, committed corrupt practices within the meaning of Section 123(3) and Section 123(3A) of the Act, thereby rendering the election of respondent No. 1 void u/s 100(1)(b) of the Act.

17. It may be mentioned at the outset that the issues in which the three articles are said to have been published have not been brought on record although under Rule 9 of Chapter XV-A of the Rules of the Court read with Rule 8 of Chapter XV thereof, the petitioner ought to have produced, on the date fixed for the appearance of the respondents, the documents in his possession on which he intended to rely. An attempt was made by the petitioner to produce some issues of Himani at a very late stage--on the date on which the last witness of the petitioner, namely, the petitioner himself, was to be examined. For the reasons stated at paper A-133, his application for producing some issues of Himani, paper A-130, was rejected. It may also be mentioned that of the four issues of Himani which were sought to be produced, only one, the issue of 23rd February, 1971, containing the article at Annexure 8-A, would be relevant for this issue.

18. The written-statement of respondent No. 1 regarding the publication of the three articles in Himani is quibbling. In paragraph 23, he has stated:--

"If any publication was made it was neither made with the respondent's consent, knowledge information or consent.. . . No sooner the respondent knew of the articles appearing he repudiated the same. However, without admitting the alleged articles with which the respondent has nothing to do, it is submitted that it does not constitute any corrupt practice." In paragraph 24, respondent No. 1 says: "the articles were contributed by others as usual and the respondent had nothing to do with it...." When asked to give better particulars, respondent No. 1 stated in his affidavit at Paper A-56 thus:--

"4. That as regards paragraph 23 of the written statement it is submitted that at one meeting at Raithal in Bhatwari Development Block where the attention of the respondent was drawn to the fact that some articles were published in Himani concerning respondent No. 2, the Maharaja of Tehri Garhwal, the respondent No. 1 repudiated the fact and expressed his ignorance about the same. This news item was published in an issue of Himani dated 14-4-1971

5. That as regards paragraph 24 of the written statement, the articles were contributed by the persons whose names are already given in the articles. "Khandar Niwasi" is the pen name of Shri Tej Ram Bhatt, Journalist of Dehra Dun."

In the circumstances I am inclined to hold that the three articles were actually published in the Himani as alleged.

19. The petitioner has hinted that all these three articles were of the authorship of respondent No. 1, but there is not an iota of evidence in support of such a case. The article at Annexure 8 purports to have been written by Shyam Chand Negi, while the articles at Annexures 8-A and 9 mention their author as "Khandar Niwasi" which is the pen name of Tejram Bhatt. I am unable to disbelieve that the articles were contributed by the persons whose names are mentioned therein as their authors.

20. It was argued on behalf of the petitioner that respondent No. 1 being admittedly the printer and publisher of the newspaper, a presumption would arise that the articles were published in the newspaper with the consent and knowledge of respondent No. 1. It was also argued that in virtue of Section 7 of the Press and Registration of Books Act, 1867, respondent No. 1 ought to be presumed to be the editor of the newspaper. I do not think that I should take notice of such presumptions in an Election Petition which, in regard to allegations of corrupt practices, is in the nature of a quasi-criminal proceeding. "An election is something which cannot be readily set aside. There must be proof and convincing proof that a person is not properly chosen to fill a particular seat. Mere surmise or suspicion is not sufficient." [Laxman Siddappa Naik Vs. Kattimani Chaniappa Jamappanna and Others](#), In the absence of any evidence of knowledge or consent of respondent No. 1 to the publication of these articles in his newspaper, I cannot associate him with their publication. Respondent No. 1 could naturally be expected to be away in the constituency during the election period for canvassing most of the time if not all the

time, particularly, as the Constituency is, even according to the petitioner's witness Grish Chandra Jayal, P. W. 6, very large in size admeasuring 12000 sq. miles, the farthest place from Dehradun being 170 miles. Respondent No. 1's witness L. D. Saklani, Additional Election Inspector, R. W. 1, says that some of the places in the Constituency could be approached only On foot, being at a very high altitude of over 10,000 feet. Raj Kumar Kanwar, R. W. 2, has stated that one Ratouri was looking after the affairs of the Himani newspaper during the election period as respondent No. 1 was touring in the Constituency.

21. The contents of these three articles may now be examined to determine whether they are such as may be caught by Section 123(3) and Section 123(3-A) of the Act.

22. Annexure 8 is written under the caption "The Maharaja of Tehri Garhwal has no right to the votes of public". The article describes the dynasty of respondent No. 2 as a great enemy of Rajputs who were humiliated like slaves. It says that Dandis of the Maharaja and his family were made to be carried by Rajputs and not by Brahmans and Harijans and that the Rajputs in the States were debarred from using the title "Thakur". According to the article, on the death of Maharaja Sudarshan Shah issueless in 1859, Bhawani Singh, who was born of a Dasi, named Gunkali, was crowned Maharaja in return for the treacherous services rendered by Maharaja Sundershan Shah in 1857 and a Dasiputra has prohibited the Rajputs from using the word Thakur." Even the uncle of Maharaja, Narendra Shah, was not allowed to name his son as Virendra Shah and that name was compelled to be converted into Virendra Singh on the ground that "Shah" could only be used by the Maharaja's progeny. On the princesses of the royal family getting married, the Rajput girls were sent to accompany them as Dasis and were not allowed to return home. The Rajputs were denied high positions and higher education in Medicine, Engineering etc. In February, 1971, when the eldest son of respondent No. 2 was canvassing, he was asked why the royal family does not marry the Rajputs, whereupon, he said that the marriages could take place with other royal families. The article ends up with an exhortation that now was the occasion to take revenge upon the insults showered upon Rajputs and accordingly the electorate should vote for respondent No. 1 and not for respondent No. 2.

23. Annexure 8-A commences with an appeal to respond to the call of Smt. Indira Gandhi for new socialism by voting for respondent No. 1, who is described as a freedom soldier, and by annihilating the Raja (respondent No. 2) described as a professional robber. It then says that respondent No. 2, after sucking the people and after making them slaves in every way, has now come forward to beg for votes shamelessly. Like the article in Annexure 8, this article also describes the mother of Bhawani Singh as a Dasi, nay a dancing girl, and suggests that Bhawani Singh got the real son of Sudarshan Shah murdered by black magic. It further alleges that the Political Agent desired to know why Kirti Shah was using the title of Shah and when Kirti Shah was asked to produce the Sanad on which he relied upon to call himself

"Shah", he became worried and prayed that he should be allowed to use the title and enhance his prestige in the eyes of his subjects.

24. The article in Annexure 9 charges Narendra Shah, the father of respondent No. 2, as regarding himself as the undisputed despotic ruler and regarding Tehri State as his personal and ancestral property. It further says that Narendra Shah was only a Raja but in order to become a Maharaja--a title which could be recognised by the Britishers only if the income was Rs. 50 lacs and more, he hatched a scheme to augment his income in several ways which have been described. He ultimately succeeded by these methods in earning the title of Maharaja for himself and his successors. The article describes a dream which respondent No. 2 is said to have dreamt. In the dream, respondent No. 2 went to Ajmer and Indore for studies, but he failed in the examination while his younger brother was successful; his father intervened to have respondent No. 2 promoted as it would have been disgraceful for the younger brother to get a higher class and the elder to be in the lower class but the authorities declined to promote such simpleton. Respondent No. 2 then saw in the dream that he was going to Banswada as a bridegroom where he was put up in the fort while the other members of the marriage party were accommodated in a school building. He saw that every one was being fed on equal basis without discrimination in the feast. The article further describes the revolution which took place in the State of respondent No. 2 in which he and his ancestors were murdered. The article then ridicules respondent No. 2 for asking votes from Rajputs of the slavish mentality and points out that the Rajputs were not allowed to describe themselves as Thakurs and the daughters, and sisters of Rajputs were given in the form of "Khawas" without matrimonial rites. If, notwithstanding the humiliations, the Rajputs voted for respondent No. 2, their conscience must have been dead. Finally it gives a call to Rajputs to unite and drive respondent No. 2 in the wilderness and strengthen the hands of Smt. Indira Gandhi for ushering a new climate of relief and establishing a progressive Government.

25. There is no doubt that these three articles bring down respondent No. 2 in the esteem of the reader but the question is whether all or any of them fall within the mischief of Section 123(3) and Section 123(3-A) of the Act. It is significant that the petitioner has not sought to allege corrupt practices u/s 123(4) or Section 123(4) of the Act.

26. As regards Section 123(3), the petitioner contends that these three articles contained an appeal to vote for respondent No. 1 and refrain from voting for respondent No. 2 on the ground of religion, race, caste or community. The language of the section is:

"The appeal..... to vote or refrain from voting for any person on the ground of his religion, race, caste, community...."

These words indicate, to my mind, that the appeal in the context of the present case should be to vote for respondent No. 1 on the ground of his religion, race, caste or community or to refrain from voting for respondent No. 2 on the ground of his religion, race, caste or community. None of the articles contains an appeal to vote for respondent No. 1 on the ground of his religion, race, caste or community. Neither does any of them indicate that votes should not be cast for respondent No. 2 on the ground of his religion, race, caste or community. I have, therefore, no hesitation in holding that the publication of the three articles do not constitute a corrupt practice within the meaning of Section 123(3).

27. Section 123(3-A) refers to the promotion of or attempt to promote feelings of enmity or hatred between different classes of citizens of India on the grounds of religion, race, caste, community or language by a candidate or his agent or any other person with the consent of the candidate or his election agent for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate. The first point to consider is whether the three impugned articles promote or attempt to promote feelings of enmity or hatred between different classes of citizens of India on grounds of religion, race, caste, community or language. The argument on behalf of the petitioner in this connection was that the articles tend to create enmity or hatred between that class of Rajputs to which respondent No. 2 belongs and the other Rajputs in the Constituency on the ground of race or community. Annexure 8 is a denunciation of the royal race of respondent No. 2 only on two grounds, namely, that the Rajputs were mal-treated and were down-trodden by the ruling family and that the ancestry of respondent No. 2 had connections with a Dasi. By stretching a point, it can be said that the article creates hatred between the ruling class and the Rajputs of the Constituency but I feel no doubt that the promotion of hatred is not either on the ground of race or community: but hatred is due to the ill-treatment accorded by the ruling family to the Rajputs or due to the low origin of the immediate ancestors of respondent No. 2. Annexure 8-A contains nothing about religion, race, caste or community. Annexure 9 deserves the same comments as on Annexure 8, I am thus inclined to conclude that none of the three articles fall within the mischief of Section 123(3-A) of the Act

28. Then again both Section 123(3) and Section 123(3-A) require that the acts contemplated by them should be committed by a candidate or his agent or any other person with the consent of the candidate or his election agent. I have already held that these three articles cannot be ascribed to respondent No. 1 and there is not a tittle of evidence to prove that they were written by the authors with the consent of respondent No. 1 or his election agent. It was, however, argued on behalf of the petitioner that the Himani newspaper had circulation in the Constituency and the relevant issues of the newspaper were distributed in the Constituency by respondent No. 1 and with his consent by some of his supporters. In the absence of any evidence to the contrary, I accept the testimony of the

petitioner"s witnesses Yeshwant Singh, P. W. 5, Girish Chand Jayal, P. W. 6, Udai Singh, P. W. 7, and Jajju Singh, P. W. 10, and hold that the newspaper Himani was in circulation in the Constituency at least during the election period. But mere circulation of the newspaper in the ordinary course is not sufficient to hold that respondent No. 1 committed the acts complained of even though he was the proprietor and publisher of the newspaper, since he was not personally responsible for publication of the articles. An attempt has been made to establish that respondent No. 1 and, with his consent, his supporters distributed some of the issues of the newspaper in the Constituency. If the evidence proves that respondent No. 1 and, with his consent, his supporters did distribute the issues containing the offending articles, it may be possible to hold that respondent No. 1 and his supporters committed the acts complained of. The evidence of Udai Singh, P. W. 7, alone indicates that the issue of Himani containing the material as in Annexure 8 was distributed by Jiwan Singh. in a bus. There is no evidence of distribution of the issues of Himani publishing Annexures 8-A and 9. Even if Jiwan Singh is to be believed, there is no evidence that he distributed the issue with the consent of respondent No. 1. There is some evidence or a doubtful nature that respondent No. 1 and some of his supporters distributed the Himani Newspaper but that evidence does not further show that the issues so distributed contained any of the articles at Annexures 8, 8-A and 9.

29. For the above reasons there is no escape from holding that the allegations of corrupt practice u/s 123(3) and Section 123(3-A) have not been brought home.

Issue No. 7:

30. This issue deals with the publication of an article, a copy of which is at Annexure 10, in the issue of Himani dated 10th February, 1971, that one of the contesting candidates, Vidyasagar Nauliyal had withdrawn from the contest. According to the petitioner, the statement is false to the knowledge and belief of respondent No. 1, who has, by publishing the news item, committed a corrupt practice within the meaning of Section 123(4) of the Act. Respondent No. 1 totally denies the responsibility for the publication of the news item.

31. Merely because respondent No. 1 is the proprietor, printer and publisher, he cannot be held to have himself put out the news item and published it, particularly, as I have already held, since he was almost always out in the Constituency. The article says that the Communist party has announced that there was no Communist candidate in the Constituency and in substance it mentions that the Communist party had withdrawn its candidate in the Constituency and had asked the candidate also to withdraw. Vidyasagar Nautiyal, respondent No. 3 was originally put up" as a candidate of the Communist party. It appears from the evidence of L.D. Saklani. Additional Election Inspector at the Constituency, that the Secretary of the Communist Party first intimated to the Returning Officer that the symbol of the Communist Party should be allotted to Vidyasagar Nautiyal, but on 3rd February,

1971, he intimated that in view of the understanding between the parties the Communist Party was not setting up any candidate and hence the symbol of the Communist Party should not be given to any candidate. The intimation was attended to on the 8th February, 1971, and since the symbol was already allotted to Vidyasagar Nautiyal the Election Officer informed the Secretary of the Communist Party that no action could be taken at that late stage. (Vide Ext. R-2 and R-3). The news item as in Annexure 10 was published in these circumstances. These facts clearly indicate that the statement in the news item that the Communist Party had withdrawn its candidate from the contest cannot be said to be false and even if any responsibility can be attached to respondent No. 1, he cannot be held to have committed a corrupt practice within the definition in Section 123(4) of the Act. The finding on this issue has, therefore, to be against the petitioner.

Issue No. 8

32. This issue alleges a corrupt practice said to have been committed by respondent No. 2 u/s 123(4) of the Act and refers in this connection to two publications in Himani, copies whereof are at Annexures 10-A and 11.

33. The relevant issues of Himani are not, however, produced.

34. As regards Annexure 10-A, respondent No. 1 has stated in his written statement that the correspondent sent the news which may have been published believing it to be correct in the absence of respondent No. 1 who was away in the Constituency on election work. The news item which is dated 2nd March, 1971, and was published in the issue of Himani dated 3rd March, 1971, states in substance that respondent No. 2 had admitted defeat in the election to his close associates and further that respondent No. 2 had formed a syndicate, to whose leader he had given two sums of Rs. 30,000/- each for distribution among the electorate but even one-fourth of the amount was not distributed and hence his supporters were discontented and the election campaign for respondent No. 2 slackened.

35. The Parliamentary Constituency of Tehri Garhwal is made up of five Assembly Constituencies, namely, Tehri, Uttar Kashi, Deo Prayag, Mussoorie, and Badri Kedar. The polling in Deo Prayag Constituency was on the 5th March, 1971, while the date of poll for the other Constituencies was the 1st March, 1971. The news item has appeared after the poll had taken place in all but Deo Prayag Constituency.

36. There is not the slightest evidence led by the petitioner to prove that this news item was the handi work of respondent No. 1 or that it was given out by some one with his consent. As in the case of other articles, the petitioner relies upon the presumption that the publication of the news item in the newspaper of respondent No. 1 ought to have been made with the knowledge and consent of respondent No. 1. I have already observed earlier that on such a presumption, I cannot hold respondent No. 1 guilty of corrupt practices. Apart from that, I am not satisfied that the news item was reasonably calculated to prejudice the prospects of respondent

No. 2 for the simple reason that Deo Prayag is so far away in a hilly area from Dehradun, the venue of the publication, that the relevant issue of the newspaper could not fall into the hands of the electorate at Deo Prayag on or before the date of poll.

37. As regards the statement that Rs. 60,000/- were paid by respondent No. 2 for distribution among his supporters, the statement itself is prefaced with the words "it is said". Even if the statement is untrue, the source being unknown and there being no evidence to associate respondent No. 1 with it, the charge of corrupt practice against respondent No. 1 cannot succeed.

38. Annexure 11 purports to be an election manifesto of respondent No. 2 and the allegation is that the manifesto actually issued by respondent No. 2 was not in this form. The original manifesto of respondent No. 2 has not been brought on record and unless Annexure 11 is compared with the manifesto actually issued by respondent No. 2, it cannot be said that Annexure 11 is not the real manifesto of respondent No. 2. It was urged that any reader of Annexure 11 would conclude that this could not be the real manifesto of respondent No. 2, but this argument must fail as it would be only a matter of guess-work. Unless the actual manifesto issued by respondent No. 2 is before me, I cannot hold that Annexure 11 is a false manifesto of respondent No. 2, however absurd its contents may be. Annexure 11 was published in the issue of 1st March, 1971, when respondent No. 1 could naturally be expected in the Constituency as it was a date of poll and hence the publication of this manifesto cannot be attributed to respondent No. 1 or to anyone to whom he had given consent to publish it

39. The result is that the finding on this issue has to be against the petitioner's case.

Issue No. 9:

40. This issue was not pressed by the learned counsel for the petitioner at the hearing and hence the finding thereon would be in the negative.

Issue No. 10:

In view of the findings on issues Nos. 3 to 9 the petitioner is not entitled to any of the declarations sought.

Issue No. 11:

The result is that the petition deserves to be and is hereby dismissed.

41. In awarding costs to respondent No. 1, I take into consideration the fact that the petitioner, on his own evidence, was highly indebted and it is unlikely that he on his own was in a position to file the petition and incur heavy expenditure on furnishing security, on the witnesses examined by him and on engaging a counsel of the standing of Shri Shanti Bhushan. Most probably he has been set up by respondent No. 2 to fight this case. I also take into consideration the fact that respondent No. 1

himself has not entered into the witness box and submit himself to cross-examination by the petitioner. In my opinion ends of justice would be met by directing the petitioner to pay to respondent No. 1 Rs. 1000/- (Rupees one thousand) only as costs. The costs payable to respondent No. 1 may be paid to him from the security amount of Rs. 2,000 deposited by the petitioner. The petitioner and respondent No. 2 shall bear their own costs.