

(1967) 09 CAL CK 0018**Calcutta High Court****Case No:** Election Petition Case No. 3 of 1967

Abinash Pramanick

APPELLANT

Vs

Harekrishna Das

RESPONDENT

Date of Decision: Sept. 13, 1967**Acts Referred:**

- Conduct of Elections Rules, 1961 - Rule 38, 39, 54A, 56(3), 56A(2)
- Constitution of India, 1950 - Article 326
- Representation of the People Act, 1950 - Section 19
- Representation of the People Act, 1951 - Section 100, 100(1), 100(2), 123(2), 83(1)

Citation: (1968) 1 ILR (Cal) 478**Hon'ble Judges:** Sankar Prasad Mitra, J**Bench:** Single Bench**Advocate:** Arun Prakash Chatterjee and A.P. Sarkar, for the Appellant; S. Mukharji and A.K. Panja for Respondent No. 1 and B. Basak, for the Respondent**Final Decision:** Dismissed**Judgement**

Sankar Prasad Mitra, J.

The Petitioner was a candidate for election to West Bengal Legislative Assembly from Balagarh Assembly Constituency. It was a constituency in the District of Hooghly which was reserved for electing a member of the scheduled caste community. The Petitioner lost to the Respondent No. 1 Harekrishna Das by a margin of 43 votes. The Petitioner challenges the election on various grounds and has asked for a declaration that he has been duly elected. His grievances are: (a) that the Respondent No. 1 or his election agent interfered with the free exercise of the electoral right of many of the Muslim voters in the constituency and (b) that there has been noncompliance with some of the provisions of the Representation of the People Act, 1951. The other Respondents in this petition are Kartick Chandra Roy who was the third candidate in the election and N. Ganguly who was the returning

officer. Kartick Chandra Roy did not appear at all. The returning officer has appeared. In the presence of counsel for the Petitioner, the Respondent No. I and the returning officer, and on their suggestions the following issues were framed on May 22, 1967:

Issues

(1) Did the Respondent No. 1 or his election agent interfere with the free exercise of the electoral right of many Muslim electors in villages Rampur, Taragul and Mahipalpur of the Balagarh Assembly Constituency (Scheduled Caste) by openly threatening that unless these Muslim electors voted for the Respondent No. 1, they would be driven out of this country?

(2) (a) Is the Petitioner entitled to raise the point of non-compliance with the provisions of the Representation of the People Act, 1951, in preparing the electoral roll as alleged in paras. 6 and 7 of the petition?

(b) If so, has there been any non-compliance with the same materially affecting the result of the election?

(3) (a) Was there any non-compliance with the provisions of the 1951 Act as alleged in para. 8 of the petition?

(b) If so, was the result of the election materially affected thereby?

(4) To what relief, if any, is the Petitioner entitled?

Both the parties had examined a number of witnesses on all the issues. I will discuss these issues one by one and give my answers thereto.

Issue No. 1.

2. In para. 5 of the petition it is, inter alia, alleged that the Respondent No. 1 and/or his election agent and other persons with the consent of the Respondent No. 1 and/or his election agent interfered with the free exercise of the electoral right of many Muslim electors of villages Rampur, Taragul, Mahipalpur etc. of the said constituency by openly threatening that, unless they voted for the Respondent No. 1 who was a Congress candidate, they would be driven out of this country, thereby promoting feelings of enmity or hatred between different classes of the citizens on the ground of religion for the furtherance of the prospects of the election of the Respondent No. 1.

3. Learned Counsel for the Respondents appearing before me invited me to consider the allegations aforesaid in the light of the provisions of Section 100(1)(b), 123(2) and 83(1)(b) of the Representation of the People Act, 1951. Section 100(1)(b), inter alia, provides that subject to the provisions of Sub-section (2) if the High Court is of opinion that any corrupt practice has been committed by a returned candidate or his election agent, or by any other person with the consent of a returned

candidate or his election agent, the High Court shall declare the election of the returned candidate to be void. Section 123(2), *inter alia*, prescribes that for the purposes of the 1951 Act "undue influence", that is to say, any direct or indirect interference or attempt to interfere on the part of the candidate or his agent, or of any other person with the consent of the candidate or his election agent, with the free exercise of any electoral right, shall be deemed to be a corrupt practice. Section 83(1)(b) lays down, *inter alia*, that an election petition shall set forth full particulars of any corrupt practice that the Petitioner alleges, including as full a statement as possible of the "names of the parties" alleged to have committed such corrupt practice and the date and place of commission of each such practice.

4. In the Election Petition Rules, 1967, of our Court also provisions have been made that when any election is called in question on any of the grounds specified in Section 100(1), full particulars of any corrupt practice that the Petitioner alleges together with the names of the parties alleged to have committed such practice have to be stated.

5. In view of these provisions in the Act and in our Rules while framing issue No. 1 we had to ignore certain allegations in para. 5 of the petition which appear to be vague or indefinite. For instance, not only is the Respondent No. 1 and/or his election agent but also "other persons" are charged with commission of corrupt practices. The names of these other persons do not appear in the petition. That is why the issue had to be restricted to commission of corrupt practices either by the Respondent No. 1 or by his election agent. Secondly, apart from three villages specifically mentioned in para. 5, by the use of the word *et cetera*, it is suggested that corrupt practices were committed in other villages as well; but the issue could not be framed on that basis and only three villages have been named therein.

6. We have, therefore, to consider whether there was interference with the free exercise of electoral right in Rampur, Taragul and Mahipalpur by (a) the Respondent No. 1 or (b) his election agent.

7. The allegation is that the Muslim electors in three villages in the constituency were threatened that unless they voted for the Respondent No. 1, they would be driven out of the country. This is a very serious allegation against a candidate in an election or his election agent. In *Ram Dial v. Sant Lal* 20 Elec. L.R. 482 (490, 491) the Supreme Court has discussed the differences between the English and the Indian law relating to "undue influence" at elections. Their Lordships of the Supreme Court are of the view that the Indian law does not emphasise the individual aspect of the exercise of such influence but pays regard to the use of such influence as has the tendency to bring about the result contemplated in the clause. What is material under the Indian law is not the actual effect produced, but the doing of such acts as are calculated to interfere with the free exercise of any electoral right.

8. In the instant case Mr. Arun Prakash Chatterjee for the Petitioner realised that the witnesses, whom his client had called did not satisfactorily prove the allegations in para. 5 of the petition even in the light of the principles the Supreme Court had enunciated. But in an attempt to bring his case within those principles Mr. Chatterjee relied on the evidence of Abdul Latif and Kazi Rafiquddin to show that some interference was undoubtedly there and the Congress party tried to create an atmosphere of apprehension of troubles amongst the Muslims. Learned Counsel also submitted that going through the evidence of these witnesses as a whole one should come to the conclusion that they were afraid of telling the truth on the witness box as they were suffering from a sense of danger ahead of them. I saw these two witnesses on the box. It did not seem to me that they were hesitating to come out with the truth owing to some kind of fear in their minds; but assuming that Mr. Chatterjee's impression of their evidence is correct these two witnesses said nothing at all against the Respondent No. 1 who was the returned candidate. In fact, none of the Petitioner's witnesses on this issue has made any charge against the Respondent No. 1 personally. In the total absence of any evidence I cannot but answer this issue in the negative so far as the Respondent No. 1 is concerned.

9. The only other point that remains is whether the Respondent No. 1's election agent had interfered with the free exercise of electoral rights of the Muslim voters of the three villages mentioned above. Harekrishna Das, the Respondent No. 1, has said in his evidence that he did not appoint any election agent at all (Q. 22). He was not cross-examined on this answer. Abinash Pramanick, the Petitioner, also says that he does not know for certain if Harekrishna had an election agent (Q. 134). He admits that if an election agent had been appointed by Harekrishna, the document relating to such appointment must be with the returning officer (Q. 146). No such document has been produced before me. In Qs. 148 to 178 Abinash tried to say that from the manner a person named Mrityunjay Chattapadhyaya was working on behalf of Harekrishna Das, Abinash had the impression that Mrityunjay was Harekrishna's election agent and he had levelled the charges of corrupt practices against Harekrishna and Mrityunjay in para. 5 of the petition. He said that he got the impression that Mrityunjay was Harekrishna's election agent on the day of counting inasmuch as Mrityunjay was Harekrishna's mouthpiece before the returning officer.

10. It is obvious that in this state of the evidence it is impossible to hold that Harekrishna Das had an election agent and Mrityunjay Chattapadhyaya was the election agent appointed by him.

11. In the premises, I hold that there is no evidence that either the Respondent No. 1 or his election agent interfered with the free exercise of the electoral right of Muslim electors as alleged in para. 5 of the petition. The answer to issue No. 1 is in the negative.

Issue No. 2A.

12. In paras. 6 and 7 of the petition it is alleged that the constituency with which we are concerned consists of the areas within the jurisdiction of the Balagarh Police Station and those within the jurisdiction of Digsui Hoera and Chandrahati anchal panchayat in Mogra Police Station in the sadar Sub-division of Hooghly. The Petitioner alleges that Ward No. 3 in Refeitpur gramsabha in Chandrahati anchal panchayat was previously included in the district of Hooghly, but it was later included in the district of Nadia. The Petitioner states that voters of the said Ward No. 3 have been enlisted twice--once in the Balagarh constituency and again in the Chakdah constituency. The Petitioner has given several instances of double inclusions in para. 6 of his petition. The Petitioner does not state that these electors have voted twice in two different constituencies in the same general election. His grievance is that they were residents of an area within the Chakdah constituency but were wrongly enrolled as voters of the Balagarh constituency and had actually cast their votes in Balagarh. The Petitioner says that the inclusion of the names of these electors, in the electoral roll of the Balagarh constituency, was a direct violation (a) of the provisions of the Constitution and (b) of the provisions of the Representation of the People Act, 1951, and the rules made thereunder. The Petitioner's complaint is that the result of the election has been materially affected by reason of the said non-compliance. He made representations to the returning officer, but those representations were of no avail.

13. Mr. Basak, learned Counsel for the returning officer, has urged that an election can be challenged in this Court only on grounds specified in Section 100 of the Act of 1951. One of such grounds is that the result has been materially affected by non-compliance (i) with the provisions of the Constitution and (ii) with the provisions of the 1951 Act or rules or orders made under the 1951 Act: vide Section 100(1)(d)(iv) of the Representation of the People Act, 1951. Learned Counsel submits that enrolment of voters has nothing to do with the 1951 Act. There are exhaustive and elaborate provisions in the Representation of the People Act, 1950, for preparation of electoral rolls, inclusion and correction of names in the electoral rolls and all other matters connected therewith, including provisions for appeals. In this respect the 1950 Act is a complete code. The violation or non-observance, if any, of the provisions of the 1950 Act cannot be the subject-matter of an election petition under the Act of 1951. In the premises, Mr. Basak has invited me to answer this issue in the negative.

14. Mr. Arun Prakash Chatterjee, learned Counsel for the Petitioner, has stated in reply to Mr. Basak's argument that a non-compliance with a provision of the Constitution is within the scope of Section 100(1)(d)(iv) of the 1951 Act. And the enrolment of non-residents as electors is a non-compliance with Article 326 of the Constitution which runs thus:

326. The elections to the House of the People and to the Legislative Assembly of every State shall be on the basis of adult suffrage; that is to say, every person who is

a citizen of India and who is not less than twentyone years of age on such date as may be fixed in that behalf by or under any law made by the appropriate Legislature and is not otherwise disqualified under this Constitution or any law made by the appropriate Legislature on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at any such election.

15. In my judgment in Election Petition Case No. 2 of 1967, Kanailal Bhattacharjee v. Nikhil Das and Anr. Election Petition Case No. 2 of 1967, judgment dated Sept. 13, 1967, I have said, inter alia, that under Article 326 there may be two types of disqualifications, namely, (i) a disqualification under the Constitution and (ii) a disqualification under any law made by the appropriate Legislature on the ground of non-residence, etc. I have also said that the registration of a non-resident as an elector may be a violation of the Act of 1950--as this is a disqualification under the said Act--and not a non-compliance with any provision of the Constitution. I have given all my reasons in support of this conclusion in the said judgment in Kanailal Bhattacharjee's case. I am of opinion that whether or not a person "ordinarily resident" in a constituency which was one of the conditions of registration as an elector u/s 19 of the Representation of the People Act, 1950, could not be the subject-matter of an election dispute before this Court which derived its powers under the Act of 1951. My answer to this issue is, therefore, in the negative.

Issue No. 2(b).

16. In view of my answer to issue No. 2(a) it is no longer necessary to discuss this issue at all, but both parties have called a number of witnesses in support of their respective cases. Certain documents have also been tendered on their behalf. Moreover, learned Counsel for the Respondent No. 1 did not expressly extend his support to the contentions of Mr. Basak and appeared to be non-committal on the points raised under issue No. 2(a). In these circumstances for the sake of completing this judgment it is only proper that I should express my views on this issue as well, assuming that my answer to issue No. 2(a) was in the affirmative. In deciding this issue two aspects of the matter have to be borne in mind. Firstly, we have to see whether non-residents have been included at all in the electoral roll of the Balagarh constituency and secondly, whether their inclusion and eventual casting of votes have materially affected the result of the election. I shall take the second point first. We have already seen that the Respondent No. 1 has won the election by a majority of 43 votes only. Sailendra Nath Ghose, who was a polling agent of the Petitioner in Booth No. 71, has stated in his evidence that about 188 of the disputed votes were cast in the election (Qs. 15 and 16). This statement of his has not been challenged in cross-examination. Baidyanath Dutta, another witness of the Petitioner, has stated that about 180 of these persons had actually voted (Q. 108). This statement of Baidyanath has not also been challenged in cross-examination. It is evident, therefore, that if these disputed persons were non-residents, the result of the

election has been materially affected by their votes having regard to the small margin of difference between the returned candidate and the Petitioner. I need not elaborate this point any further as counsel for the Respondent No. 1 did not dispute this proposition. The principal question, therefore, with regard to this issue, is whether at all material times the disputed persons were residents of the Balagarh constituency. On this point a large number of witnesses has been examined before me. A few documents were also tendered. I propose first to deal with the evidence of witness called by the Petitioner and then I would come to the witnesses summoned by the Respondent No. 1, but before I do so it would be convenient to refer to the written statement of the Respondent No. 1 and of the returning officer on the point under consideration. The Respondent No. 1 in paras. 5 and 6 of his written statement has denied all the allegations in paras. 6 and 7 of the petition. The returning officer N. Ganguly has stated a few facts in para. 4 of his written statement which appear to be relevant. The returning officer says that Ward No. 3 of the Refeitpur gramsabha of the Chandrahati anchal panchayat covers part of the Tissue colony falling within the Refeitpur mauza and the village Jatrasiddhi which are within the district of Hooghly. According to the returning officer the residents of Ward No. 3 of Refeitpur gramsabha are eligible to be included in the electoral roll of the Balagarh constituency. The returning officer has no knowledge of their enrolment in any other constituency. He states that a petition dated February 16, 1967, was received by him from the Petitioner's election agent raising these points and inviting him to intervene in this matter, but as the representation was received beyond the prescribed time it could not be entertained.

17. The position, therefore, is that on the pleadings in this election petition and on the evidence on record the Court has to decide whether Ward No. 3 of the Refeitpur gramsabha covers the Tissue colony in the Refeitpur mauza and the village called Jatrasiddhi and whether both the Tissue colony and Jatrasiddhi are in the district of Hooghly. If the answers to these queries are found to be in the affirmative the Petitioner has no case whatsoever.

18. With these preliminary observations I now proceed to examine the evidence of the Petitioner's witnesses.

19. Abinash Pramanick, the Petitioner, says that while scrutinising the electoral roll he found only three voters of Ward No. 3 of the Refeitpur gramsabha and did not find the rest. From Ex. A which is a part of the electoral roll for Balagarh he has identified three Bhattacharyyas whose names appeared against serial Nos. 1, 2 and S as the persons whom he actually found when he was moving from door to door. His case is that only these three persons resided in that area and not the others. This is the position that he found on February 14, 1967. (Qs. 38 to 60) He heard from Baidyanath Dutta that the other persons in the relevant electoral roll resided on the other side of the Ganges and advised his election agent to file a complaint with returning officer (Q. 79). The complaint was filed on February 15, 1967 (Q. 81). The

areas covered by his constituency are, according to him, Khaira and Digsui anchal of Balagarh and Mogra Police Station and the Chandrahati anchal under the Mogra Police Station (Q. 261). Abinash has not heard the name of a village called "Jatrasuddhi" (Q. 263). The evidence of Abinash in Qs. 269 to 277 is rather interesting. He admits that when he went to the area he met only the three Bhattacharyyas and did not meet the rest. He does not know whether or not Jatrasiddhi is within the Mogra Police Station. He came to know from the anchal sadasya, namely, Baidyanath Durta that apart from the Bhattacharyyas the others in the list of voters were residing at char Madhusudanpur in the district of Nadia.

20. The evidence of Abinash Pramanick, therefore, does not by itself establish his case in the petition. He derived some information from Baidyanath Dutta and formed the opinion that the said other persons in the list were not residents of the district of Hooghly.

21. I will now come to his election agent Prabir Sengupta. This witness says that he made certain representations to the returning officer on February 16, 1967, but no action was taken thereon. He says that the Balagarh constituency and the Chakdah constituency were separated by the river Bhagirathi and the names of the disputed persons appeared in the electoral rolls of both the constituencies. These persons are all Mahatoes and the influence of his party on those Mahatoes was negligible. They voted at the Dilip Kumar High School in the Balagarh constituency (Qs. 86 to 104). So far as Prabir Sengupta's knowledge goes there was a char called "Jatrasiddhi" about 7 or 8 or 10 years ago; but that char is now under the waters of the Ganges. He does not know whether there is a place called Jatrasiddhi; but he knows that char Jatrasiddhi is under the water (Qs. 279 to 281). He then says that upon enquiries made by him he came to know that the Mahatoes whose names appeared in the list of voters were in existence but they lived in char Madhusudanpur. He went to the other side of the river and found the Mahatoes there. He had also looked into their parchas or record of rights and further came to know that their civil matters were tried by the Chakdah Court and their criminal cases went to the Chakdah Police Station and not the Mogra Police Station (Qs. 284 to 292). I want to say at once that if Prabir Sengupta had seen the parchas, these parchas should have been caused to be produced before this Court, but that was not done. Again, if Prabir Sengupta had come to know of the civil and criminal cases of these Mahatoes, certain relevant records of such cases might have also been caused to be produced, but that was not done either. Lastly, Prabir Sengupta in Qs. 534 to 536 says that he admits that the Tissue colony lies within the district of Hooghly, but he does not know about the village Jatrasiddhi. He then adds that this village is not in existence. His case is that the Refeitpur gramsabha is in the Hooghly district, but Ward No. 3 is in char Madhusudanpur which is in the Nadia district.

22. Needless to say that Prabir Sengupta's evidence does not improve the matter. The most material documents, namely, the parchas he had seen and the records of

civil and criminal cases he had referred to, were not produced before this Court. His evidence on the existence of a village called Jatrasiddhi also appears to be shaky.

23. Next I come to the depositions of Sailendra Nath Ghose who was the Petitioner's polling agent in Booth No. 71 in which the disputed votes were cast. This witness has said in cross-examination that he had heard the name of the village Jatrasiddhi that lies on the eastern side of the river Bhagirathi (Q. 24). He appeared to be contradicting Prabir Sengupta who said in answers to Qs. 279 and 280 that Jatrasiddhi or char Jatrasiddhi was under the waters of the Ganges.

24. The next witness of the Petitioner I want to take up is Mahesh Mahato who had voted in the district of Nadia. He gives the names of four or five members of his family who had voted in the district of Hooghly (Qs. 2 and 4). These persons live by the side of his house in Nadia in a village called char Madhusudanpur (Qs. 10 to 12). He says that formerly he and his relations used to live in the district of Hooghly-- but for the last one or two generations on the basis of the gram panchayat we have been residing in the district of Nadia.

In Q. 31 Mahesh Mahato has said that very recently the inhabitants of his village were having difficulties in obtaining ration cards and there was a dispute as to whether these inhabitants belonged to the district of Nadia, or the district of Hooghly. This answer of Mahesh Mahato weakens his previous answers to a certain extent. In Qs. 34 and 36 he is asked about the Mogra Police Station. He says that he knows that Mogra thana but hastens to add that at present rent receipts etc. "are issued to us from Kalyani". His evidence is that about 8 or 10 years ago--

we were under the Police Station, Mogra, but we are now under the Police Station, Kalyani.

He knows the gentleman who had brought him to this Court. This gentleman went and told him--

you belong not to the district of Hooghly but to the district of Nadia, why then did you cast your votes in the Hooghly district?

His answer to the gentleman was--

I had been to Keshoram Rayon Mills to work there and during my absence Bibhuti Babu and others called the members of my family and made them cast their votes in the Hooghly district: vide Q. 38.

How little reliance can be placed on the evidence of such a witness requires no comment. Then in Q. 59 Mahesh Mahato has said that formerly there was a char land on which cultivation used to be carried on, but now the char land was under the waters of the river. In Q. 59 Mahesh Mahato is asked about the village Jatrasiddhi. His answer is: "It is the name of my village". When he says that Jatrasiddhi is the name of his village in Q. 59, he contradicts his own statement in Q.

12 that his village is known as char Madhusudanpur. To my mind, Mahesh Mahato's evidence has been of no assistance to the Petitioner: on the contrary it is perhaps legitimate to conclude on his evidence that if Jatrasiddhi exists it is not in Nadia but in Hooghly.

25. Let us now discuss the evidence of Baidyanath Dutta the most important witness of the Petitioner on this issue who is a head master of a Higher Secondary School and a sadasya of the Chandrahati anchal panchayat (Q. 1). He says that in the General Election of 1967 Refeitpur gramsabha was part of the Balagarh Assembly constituency; he resides at Chandrahati (Qs. 6 and 7). Char Madhusudanpur, says this witness, is situated on the other side of the river Ganges in the Nadia district. He knows a place called Jatrasiddhi which was in existence on the opposite side of the Ganges, but was now submerged: the village called Jatrasiddhi was included long ago in the Hooghly district and the Mogra union; thereafter the entire area was transferred to the Nadia district: in 1957 or 1958 there was a flood and Jatrasiddhi went under the river (Qs. 11 to 16). He cannot give the exact time when Jatrasiddhi was transferred to the Nadia district: Jatrasiddhi was within the Hooghly district and the Mogra union upto 1956-57: thereafter the Board of Revenue drew a line of demarcation allocating one-half of the river to Nadia and the other half to Hooghly: by this allocation Jatrasiddhi was transferred to Nadia in 1957-58: after this transfer rents of lands in Jatrasiddhi were being collected by the Nadia authorities: in November 1964 there was a Government gazette notification: according to this notification (sic) was included in Hooghly: but before November 1964 Tatrasiddhi went under the river: thereafter in or about January 1965 the block development officer of Hooghly Chinsura area sent a letter to the Chandrahati anchal panchayat: in that letter it was stated that Jatrasiddhi had been included in the Refeitpur gramsabha: but there has been no Jatrasiddhi for 7 or 8 years prior thereto (Qs. 19 to 24). The witness has not been able to Pnd a place which is called Ward No. 3 of the Refeitpur gramsabha: later on the admits that this gramsabha has four wards but at the time of holding scrutiny he could not spot out Ward No. 3 (Qs. 25 to 30). At the time of holding scrutiny the witness found on the Hooghly side of the river only three voters in Ex. A: the rest of the voters from serial No. 4 to serial No. 246 are residents, according to him, of char Madhusudanpur on the other side of the Ganges (Qs. 37 to 40).

26. At this stage the cross-examination of Baidyanath Dutta begins. Between Qs. 72 and 88 he is confronted with various documents issued by diverse authorities bearing the name of the village "Jatra Suddhi" or Jatrasiddhi: but he tries to stick to his evidence that there is no human habitation in Jatrasiddhi which went under the river six or seven years ago (Q. 94). He did not approach the persons in that voters" list who reside, according to him, in char Madhusudanpur as he found that they were staying on the other side of the river (Qs. 95 to 99). In Qs. 144 to 146 he is confronted with a ration card (Ex. 3) bearing the name of the village Jatrasiddhi. He says that the ration card was issued and the panchayat receipts (shown to him

earlier) were also issued for political considerations. It is clear from Qs. 158 to 161 that as a sadasya of the anchal panchayat he did not object to the wrongful issue of ration cards and panchayat receipts until the election was over and then when the New Government came, he says, he addressed certain letters to the District Magistrate, the Chief Minister and the Deputy Chief Minister. He produced a letter which was a copy of an original sent to Abinash Pramanick marked Ex. C alleged to have been addressed by him to the District Magistrate of Hooghly. This copy was produced in course of re-examination by Mr. Chatterjee. Learned Counsel for the Respondent No. 1 objected to this document being tendered on two grounds. Firstly, the document was in the possession of the Petitioner, but was not disclosed in the usual way. Secondly, no attempt had been made to produce the original (Qs. 191 to 195). Leaving aside these objections (which are no doubt substantial) I do not attach any importance to this document for the simple reason that the witness wrote the letter, if at all, long after the elections were over. The witness came to know in April 1967 that Abinash Pramanick had filed an election petition. According to his evidence the letter to the District Magistrate was addressed by him on June 3, 1967. He sent the letter not by registered post but "under express delivery post." But until now he has not received any acknowledgment. The contents of the letter are similar to the allegations in para. 6 of the petition (Qs. 196 to 212). I have already said, I am not relying on this letter for the purpose of this petition; and the evidence, I ought to say, is not clear as to whether it was at all sent to the District Magistrate.

27. Learned Counsel for the Petitioner has placed strong reliance on the evidence of Baidyanath Dutta. He is a responsible member and worker of the political party which nominated the Petitioner as a candidate for the Balagarh constituency. (Qs. 53 to 57) It seems to me, however, that Baidyanath Dutta's evidence suffers from certain inherent weaknesses. He has stated that originally there was a place called Jatrasiddhi, but it went under the river. He has also stated that Jatrasiddhi, to start with, was in the district of Hooghly but was later transferred to Nadia. Towards the end of 1964, according to Baidyanath, by a gazette notification Jatrasiddhi was included in the district of Hooghly: in the beginning of 1965 the block development officer addressed a letter that Jatrasiddhi was included in the gramsabha of Ward No. 3. Baidyanath realised that the gazette notification and the block development officer's letter was damaging to the Petitioner's case and the only explanation that he suggests is that these steps were motivated by political considerations. Now, Baidyanath is a member of the Chandrahati anchal panchayat and appears to be an important public or political figure in his locality. If in 1964 or 1965 something was done to suit the convenience of a political party for which Baidyanath had no sympathy, he should have immediately protested against such moves; but the only written protest he could speak to me about was made, if at all, after the General Election was over. In these premises, I am not inclined to rely on Baidyanath's evidence to answer this issue in favour of the Petitioner.

28. I shall now come to the evidence of Bisu Mahato, another witness of the Petitioner. His name appeared in the electoral rolls both of Hooghly and of Nadia. He cannot name the constituency in Nadia district in which he was a voter. He cannot name the constituency in the Hooghly district either, but he cast his vote at the Dilip Kumar High School in the district of Hooghly. He says that he resides at char Madhusudanpur: he pays his land taxes at Nadia, and cases are conducted on his behalf in the district of Nadia. (Qs. 1 to 16) At this stage his cross-examination begins. He knows that his grandfather used to pay his taxes "formerly" in Hooghly. The grandfather is no longer alive; but he does not know where the taxes are now paid. When he is reminded of his previous answers regarding payments of land rents at Nadia, he says that his grandfather also paid taxes at Nadia and not at Hooghly. (Qs. 28 to 34) These were the answers to questions put by me. In Q. 25 he says that formerly

we used to hear about Jatrasiddhi or char Jatrasiddhi but not now.

A little later he says that five or six families are still living in Jatrasiddhi; he knows these families, he knows all the members of these families and can recognise them. After mentioning a few names he states:

people say that here is the limit of char Jatrasiddhi and five or six families live there.

He then says:

only a portion of Jatrasiddhi is now in existence. The major portion of it is now under the waters of the Ganges. (Qs. 41 to 47)

According to this witness Jatrasiddhi lies on the verge of the Ganges on the eastern side. (Q. 49) He lives on the same side of the river as Jatrasiddhi lies. (Q. 54) In Qs. 60 to 68 he is asked about a person called "Rajpati Mahato". He first says that Rajpati paid his anchal panchayat and land taxes at Nadia; but later on when a document is shown to him he explains it away by saying that the document related to a room which Rajpati had taken on rent at Refeitpur. These answers appear to be unconvincing. In Q. 70 he is further pressed about Rajpati and he says:

In the year 1965 the house taxes were collected by authorities of Hooghly. But so far as this year is concerned these taxes have not been collected by the same authorities as yet.

In the rest of the questions he tries to revert to his previous answer and says that land taxes are paid at Nadia. It is manifest that no Court can take any serious notice of the statements made by a witness of this type.

29. I next come to the Petitioner's witness Jadunandan Mahato. He knows the inhabitants of char Madhusudanpur in the district of Nadia. They voted in the last election at the Dilip Kumar High School in Hooghly. He also mentions the names of some of these persons as their houses are near his house. (Qs. 6 to 10) Char

Jatrasiddhi, says Jadunandan, was submerged by the waters of the Ganges ten years ago: there is even no village at the moment called Jatrasiddhi. (Qs. 13 and 14) In 1956 there was a flood and since then rents of his village were being collected by the Nadia autho rities. (Q. 29) Jadunandan has contradicted Bisu Mahato by denying the existence of the village called Jatrasiddhi altogether. He has come to give evidence at the request of his village "headman" Shibdayal Mahato who came with him.

30. It is convenient, therefore, to take up now the evidence of Shibdayal the last witness of the Petitioner on this issue. In the last election Shibdayal, a resident of char Jigira voted in the Chakdah constituency. Char Madhusudanpur is adjacent to his village and he knows its inhabitants; but they voted at the Chandrahati School in Hooghly. (Qs. 1 to 5) In Q. 15 he gives the name of some persons who are residents of char Madhusudanpur but had voted in Balagarh. In cross-examination he says that in the last General Election he worked for a political party which was opposed to the party of the Respondent No. 1. He is not a disinterested witness and on his evidence alone it is difficult to decide that some voters of the Nadia district had voted in the Hooghly district.

31. This is all the evidence the Petitioner has adduced. His witnesses did not appear to me to be satisfactory. They have also spoken of some material documents which have not been produced. But before I finally make up my mind I ought to examine the evidence of witnesses who came to contradict the Petitioner's witnesses. I shall first select the depositions of Jadunath Mahato who has said that char Jatrasiddhi was once a large area but most of it has been eroded by the river; only a small portion remains above water and that small portion is in the district of Hooghly: char Jatrasiddhi has never been connected by land with the bulk of the district of Hooghly: the small area that is still left is inhabited by 70 to 80 families: char Jatrasiddhi which now exists is under the Mogra Police Station: he gets his rations from the Chandrahati area: the ration card is in the name of his father: he has produced it: it has been tendered and marked Ex. 9. (Vide Qs. 16 to 42) In Q. 43 he has said that the collection of land rent and taxes in respect of mouza Jatrasiddhi has been suspended at the present moment. (Mr. Arun Prakash Chatterjee wants me to disbelieve this statement in view of what his witnesses had stated; but unfortunately, they did not produce any documents). In Q. 77 the witness repeats this answer and explains that payment of taxes has been kept suspended as the lands have been eaten up by the river. He then adds:

I have not paid the taxes because the taxes are so very heavy.

According to this witness the mouza of his village is mouza Jatrasiddhi bearing J.L. No. 30. (Qs. 89, 90). He admits in Qs. 167 and 168 that he lives at char Jatrasiddhi which is on the other side of the river opposite to mouza Refeitpur. Mr. Arun Prakash Chatterjee contends on this evidence that this is an admission that what he describes as Jatrasiddhi is not within the district of Hooghly. But this answer must be

read in the context of what he has stated in Qs. 163 to 165. In these questions he has said that the river flows at present by the eastern side of Refeitpur mouza: formerly the Refeitpur mouza did extend to the other side of the Ganges, but most of the land, he was thinking of, had been eaten up by the river and there may now be a few remnants here and there.

32. On the whole it seems to me that on the material points Jadunath Mahato's evidence should be accepted particularly in view of the family ration card and certain other documents he has produced. I shall discuss his evidence again when I deal with the documentary evidence on record.

33. I now come to the evidence of Rajpati Mahato. Mr. Arun Prakash Chatterjee, the Petitioner's counsel, has asked me to consider certain portions of his evidence to show that he has been extremely shaky. Rajpati is an agriculturist who has about 16 or 18 bighas of land in four mouzas, namely, char Jadupati, Birpara, char Jigira and Madhusudanpur. He lives in the village Jatrasiddhi which is in the district of Hooghly; but he is not definite as to the district to which the other chars belong. Later on he admits that char Jadupati and char Jagira are in the district of Nadia and his own village is on the same side of the river Bhagirathi as the other chars are; but still he insists on saying that Jatrasiddhi is within the Hooghly district. (Qs. 45 to 59) I am inclined to agree with the Petitioner's counsel to a certain extent. This witness appeared to be thoroughly confused and the impression that he gave me was that he was not properly appreciating the questions that were being put to him. I cannot place any reliance on the evidence of this witness to decide the issue one way or the other.

34. I now go to the evidence of Ramagya Mahato who has been examined before me at length and Mr. Arun Prakash Chatterjee made a number of comments on his evidence. According to this witness he resides at char Jatrasiddhi in Hooghly: the Ganges flows from the north to the south through Chandrahati and his village is on the eastern side of the river. Jatrasiddhi is bounded on the north by char Madhusudanpur, on the east by char Jagira, on the west by the river Ganges and on the south by char Jadubati. He admits that all these other chars are on the eastern side of the Bhagirathi and Chandrahati is on her western side. (Qs. 37 to 43) In Q. 52 Ramagya says that there is no village called Jatrasiddhi--"our village is char Jatrasiddhi". There were two floods, one in 1956 and the other in 1959: when the lands were flooded, some of the inhabitants of the village moved to Kalyani and some to Chandrahati. (Qs. 5 and 6) But inspite of the flood the houses in his village were not destroyed. (Q. 60) Ramagya's lands are spread over various mouzas, as for example, char Jadubati, char Jagira, char Madhusudanpur and char Birpara. These are all in the district of Nadia. He pays land taxes in Nadia for the said chars: he has no agricultural land at char Jatrasiddhi and the taxes for his properties in Jatrasiddhi are collected by the Chandrahati anchal panchayat: when his father was alive a major portion of the land in Jatrasiddhi was washed away by the Ganges and they

made a petition to the Collector of Hooghly praying that they should be exempted from paying taxes because the lands were no longer there. (Qs. 73 to 79) (The Petitioner's counsel has invited me to reject the evidence of Ramagya Mahato on char Jatrasiddhi being in the district of Hooghly inasmuch as on his own admission all the other contiguous chars are in the district of Nadia.) Ramagya says that he had a big plot of land for which he had to pay taxes amounting to a little over Rs. 6.00; but at present he has only three cottahs and a half and a house standing thereon; the rest of the land had been washed away. (Qs. 80 & 82) He does not pay any khajna for this small piece of land that is left, because he thinks that for only three cottahs and a half the amount mentioned above is fairly high: he does not remember the plot number of this land: he does not also know the khatian number. (Qs. 81 to 85) He did not produce any receipt for khajna paid by him either for lands in Nadia or in Jatrasiddhi. (Qs. 87, 88) He draws his rations from Chandrahati and has to cross the river for that purpose. (Qs. 92 to 97) Char Jatrasiddhi where he lives is within the jurisdiction of the Mogra Police Station although it is on the other side of the river. (Q. 100) For a Police case the residents of char Jatrasiddhi go to the Mogra Police Station and for legal proceedings to the Chinsura Court. (Q. 101) He did not have any occasion to go to the Ranaghat Court which is in the district of Nadia. (Qs. 102 to 106) His name along with the names of others were registered in the Balagarh constituency "by persons concerned in connection with the polling...." The gentleman who recorded the names had a paper with him, and the persons whose names were recorded had to put their signatures thereon. (Qs. 130 to 133) Twenty days before the actual polling Bhabani Sankar Sen of the Congress party informed him that his name was in the voters' list. (Qs. 136 and 137) (The Petitioner's counsel has commented on this answer that Ramagya was obviously an interested witness.) Ramagya and other persons of the locality had cast their votes at the Chandrahati High School in Hooghly: they were accompanied by Bhrgu Mahato who was a polling agent presumably of Harekrishna Das the Respondent No. 1. (Qs 140 to 144) Ramagya knows that residents of char Jagira and char Madhusudanpur which lie to the north of char Jatrasiddhi, had voted in the district of Nadia: no river separates char Jatrasiddhi from char Jagira or char Madhusudanpur: he realised that he and his co-villagers had to cross the river to vote in the Balagarh constituency: but they had to do so, according to him, because their names were recorded there. (Qs. 160 to 169) In Qs. 177 to 180 various names were shown to him from the relevant lists of voters in Chakdah and Balagarh constituencies and generally he admitted that these persons were residents of Jatrasiddhi but their names appeared in the electoral rolls of both the constituencies.

35. I am not saying that if I had to rely purely on the oral testimony of Ramagya, I would have accepted his evidence; but he has produced a number of documents and I shall have to discuss later in this judgment why in the light of these documents his case ought to be accepted.

36. The next witness, whose evidence is to be recorded in this judgment, is Harekrishna Das the returned candidate. His definite case is that persons whose names appear in the electoral roll (marked Ex. A) reside at char Jatrasiddhi in the district of Hooghly within the Mogra Police Station. (Q. 39) He has named a few persons in char Jatrasiddhi who are personally known to him. (Qs. 200 to 205) He says that Jadu Mahato, Rajpati Mahato and Ramagya Mahato did not work for him at the election. (Q. 206) Bhrigu Mahato was his polling agent. (Q. 207) He came to know Jadu, Rajpati and Ramagya because he went to their houses to bring them to this Court. (Q. 210) He had known Bhrigu even before this point of time and at the time of election he had gone from house to house at Jatrasiddhi. (Q. 211) The other Mahatoes who gave evidence for him were brought to this Court at the instance of Ramagya.

37. Lastly, we have to consider the evidence of Nilanjan Ganguli, the Subdivisional Officer of Chinsura in the district of Hooghly, who was the returning officer in this election. He says that the Tissue colony and the village known as Jatrasiddhi are within Ward No. 3 of the Refeitpur gramsabha: this village is in the district of Hooghly: he is not aware that formerly there was a bigger area known as Jatrasiddhi and a portion of that area was submerged by the river: he had not been to the place but he had seen a settlement map and his oral testimony is based on that map: Jatrasiddhi is in the middle of the river which flows by both the sides of the village: the Hooghly side is shallow and the Nadia side is deep: he is not aware if Jatrasiddhi was ever connected by land with the district of Hooghly. (Qs. 5 to 14) Jatrasiddhi is within his jurisdiction and he has been the Subdivisional Officer of Chinsura for about a year and a half. (Qs. 15, 16)

38. Learned Counsel for the Petitioner did not cross-examine him on his reference to a settlement map which he said he had seen; but after the evidence was concluded a copy of a map

made by the authority of Government in 1954-57 under the West Bengal Estates Acquisition Act, 1953,

which bears on the back of it a seal dated June 20, 1967, of the record room at the office of the District Magistrate and Collector of Hooghly was produced before me. Mr. Chatterjee wanted to rely on this map to show that the returning officer made untrue statements when he said that his evidence on the existence of Jatrasiddhi within the district of Hooghly was based on a settlement map he had seen. I cannot place any reliance on the map produced by Mr. Chatterjee's client for two reasons. Firstly, when the returning officer was in the box he should have been confronted with this map if the intention was to contradict his testimony. In other words, the returning officer was denied the opportunity of offering his explanation to this map. Secondly, I find the map is "on the basis of survey made in 1917-1921". What has happened after 1921 cannot be ascertained from this map.

39. I again go back to the deposition of Nilanjan Ganguli. There was a confusion as to the exact name of the village. Some of the witnesses described it as "Jatrasuddhi": some called it "Jatrasiddhi". The returning officer says that the correct name is "Jatrasiddhi." (Q. 21) It is under the Mogra Police Station. (Q. 86) The witness thinks that people go to char Jatrasiddhi by boat; they may also wade through the river as the water is not very deep on the Hooghly side. (Q. 89) To go to Nadia, however, "launches" are required. (Q. 90) In para. 4(b) of his written statement herein Nilanjan Ganguli has stated that Jatrasiddhi is within Hooghly. In Q. 92 he says that this is so far as he knows, he has not visited Jatrasiddhi. Ganguli has no knowledge as to whether the names of the same persons appear in Balagarh as well as Chakdah constituencies. (Q. 105) No objections in this regard were filed within the time prescribed by statute but only two days before the election. (Qs. 107 and 108) Objections could be entertained without fees before August 317 1966 and with a fee of 50 Paise upto January 12, 1967. (Q. 109) (This is one of the weaknesses in the Petitioner's case on this point: he should have objected to the inclusion of the names of the Mahatoes in the Balagarh list within the prescribed time.) The objection was filed on February 16, 1967, by Prabir Sengupta, the Petitioner's "election agent. (Q. 110) Ganguli agrees that persons whose names are in the voters" list of a constituency must be residents of that constituency. (Q. 113)

40. This is all the oral evidence adduced before me. I do not want to decide this issue, however, on oral evidence alone. Some of the witnesses produced certain documents and those documents should also be examined to test their oral testimony; but before I come to these documents let me refer to a notification in the Calcutta Gazette Extraordinary dated June 14, 1961, at p. 1453(d) which Mr. Arun Prakash Chatterjee showed to me at the time of his argument. Mr. Chatterjee says that this notification proves that there was a place called Jatrasuddhi in the district of Hooghly: there was no place called char Jatrasuddhi or char Jatrasiddhi: in 1961 Jatrasuddhi was split up into different mounds and there is no such place now known by that name. In the 1967 election, therefore, according to Mr. Chatterjee, residents of Jatrasuddhi could not have been voters in the district of Hooghly.

41. Again, this notification does not give me much assistance. The heading shows that it is on

description of mouzas of previous settlement proposed to be split up or amalgamated into new units.

I have no evidence that the proposal has been given effect to. Secondly, the splitting up or amalgamation into new areas indicates that Jatrasuddhi existed and a proposal was being made for its redistribution. Thirdly, serial Nos. 37, 38 and 40 show that at any rate some portions of Jatrasuddhi were proposed to be included in the Mogra Police Station in the district Hooghly.

42. For all the reasons aforesaid it seems to me that the gazette notification Mr. Chatterjee has relied on in support of his argument, cannot be taken as conclusive.

43. I have now to refer to the documents the first Respondent's witnesses have produced. Ramagya Mahato has produced a registered envelope with the acknowledgment receipt marked Ex. 8: he sent a letter under registered post to one Rajnath Mahato in Katihar: the sender's name and address was

Ramagya Mahato, village char Jatrasiddhi, Tribeni, Hooghly;

as the letter could not be delivered to the addressee, it came back to the sender: the letter was sent in or about November, 1961. (Vide Q. 18)

44. Ramagya Mahato has produced Ex. 7 which is a letter addressed to him by Shivdayal Mahato from Asansol in December 1958, his address on the letter was

Ramagya Mahato, village Jatrasiddhi char, P.O. Tribeni, dist. Hooghly;

the letter duly reached him in the usual course of postal communication: Shibdayal is a resident of char Jigira. (Qs. 19 to 24)

45. Ramagya has also produced his radio licence which bears the address:

Ramagya Mahato, Vill Ghatra, P.O. Sigilichar, Tribeni: (vide Ex. 6);

Ramagya in his evidence states that the village mentioned in his radio licence is "Jatra" and the word "Siddhi" which should have been written by its side has been written in the line below. (Q. 16) The radio licence, it is obvious, does not by itself establish that the name of Ramagya's village is Jatrasiddhi or char Jatrasiddhi. But it gives an indication that what the Petitioner and his witnesses have tried to make out, is not correct.

46. The next document of Ramagya is Ex. 5 which is his family ration card issued by the West Bengal Government. Here, his village is described as Jatrasiddhi: his Police Station is Mogra and his district is Hooghly. He has denied that this ration card was issued with a political motive: he has been using this card for the last two years, he draws his rations from Chandrahati under the Refeitpur gramsabha: his ration shop is situate in the Balagarh constituency. (Qs. 7 to 13)

47. Exhibit 9 is the ration card in the name of Bholanath Mahato who is 85 years of age and has been produced in this Court by Jadunath Mahato, his son. Bholanath's address in this ration card is,

village Jatrasiddhi, Police Station Mogra, district Hooghly.

His son Jadunath has stated that he draws his rations from Chandrahati. (Q. 33) And the card he has produced is the current ration card. (Q. 42)

48. According to Jadunath the collection of land rent and taxes for mauza Jatrasiddhi is now lying suspended; but he has produced the panchayati tax receipt issued by

the Chandrahati anchal panchayat in the name of his father: the receipt has been tendered and marked Ex. 10. (Q. 44 to 57) He has also produced another receipt marked Ex. 11 in respect of the panchayati tax: this receipt has been issued by the Chandrahati anchal panchayat in the name of Bholanath Mahato of Jatrasiddhi. (Vide Qs. 58 to 63). Exhibit 11, it appears, was issued on November 6, 1965, and Ex. 10 on March 28, 1967. Jadunath Mahato has also produced two other documents dated January 21, 1967 and March 10, 1967. These documents have been collectively marked as Ex. 12. The first document seemed to be the carbon copy of a notice dated January 22, 1967, of a meeting of a sub-committee for an agricultural exhibition. The notice was issued to Jadu Mahato of char Jatrasiddhi by the Tri-Fasali Krishi-Samabaya Samity Ltd. of Chandrahati, Post Office Tribeni, district Hooghly. The second document is dated March 10, 1967, in the letterhead of the same Samabaya Samity. The Secretary of the agricultural exhibition committee, it appears, sent a general notice regarding collection of funds and other articles. The document produced before this Court has been addressed to Jadu Mahato of char Jatrasiddhi who was in charge of publicity and collection of subscriptions. (Vide Qs. 62 to 66)

49. I would now refer to a few documents which learned Counsel for the Respondent No. 1 had shown in his cross-examination to the Petitioner's witness Baidyanath Dutta. The first series of documents shown to Baidyanath are six receipts of the Chandrahati anchal panchayat issued to six different persons of Jatrasiddhi. They have been collectively marked as Ex. 1. All the documents are dated March 28, 1967. Baidyanath has admitted that there are rubber stamps of the Ghandrahati anchal panchayat on all these documents. (Qs. 86 to 88) Incidentally Baidyanath is a sadasya of the Chandrahati anchal panchayat. (Q. 1).

50. Baidyanath Dutta was also confronted with Ex. 2 which was the notice of the Tri-Fasali Krishi Samabaya Samity Ltd. of a meeting of an agricultural exhibition sub-committee which Rajpati Mahato had received. Baidyanath says that he is also a member of the Samity; but he was not a member of the sub-committee: he saw the agricultural exhibition that was held. According to him the address of Rajpati Mahato, namely, char Jatrasiddhi has been wrongly written; but he has identified the signature of the secretary on this notice. (Qs. 125 to 130)

51. The ration cards of Rajpati Mahato, Bhrigu Mahato and Ramagya Mahato marked Exs. 3, 4 and 5 were shown to Baidyanath. His evidence is that the signature of Nalini Nath Chatterjee who is the Pradhan of the Chandrahati anchal panchayat appears on these ration cards. The card-holders are stated to be residing at village Jatrasiddhi. These wrong addresses, says Baidyanath, have been deliberately stated for "political consideration": the anchal pradhan, that is, Nalini Chatterjee is a member of the Congress party. When a letter came for inclusion of Jatrasiddhi in the Refeitpur gramsabha from the block development officer as per Police notification, Baidyanath, it is alleged, informed the anchal pradhan that there was no human habitation in Jatrasiddhi, but inspite of his objection the anchal pradhan issued

ration cards like Exs. 3, 4 and 5. The political motive of inclusion of these persons in the Refeitpur gramsabha was that in some of the elections they voted for the Congress candidates. The objections of Baidyanath were made verbally and not in writing. The only time that he wrote about this matter was when he communicated his objections to the District Magistrate, the Chief Minister after the elections were over, that is, in the month of June 1967. (Qs. 142 to 171)

52. I have analysed in the foregoing paragraphs the relevant oral and documentary evidence available to me on the Petitioner's complaint that a large number of voters were wrongfully included in the electoral roll of the Balagarh constituency. From the analysis set out above it is obvious that upon weighing the evidence of both the parties one should accept the case of the Respondent No. 1. The Petitioner's witnesses did not appear to me to be convincing. They also did not produce some of the material documents they had referred to in their depositions and the documents actually produced, did not appear to be conclusive. There are undoubtedly some minor contradictions in the depositions of the first Respondent's witnesses; but on the whole they seem to be consistent. Moreover, some of them came with fairly reliable documents in support of the case they orally made. I am not impressed by the story of political considerations. If such considerations were there, the other political parties which set up candidates in this constituency, one may reasonably expect, would have taken much more effective measures to counteract the moves of the Congress party than the feeble efforts of Baidyanath in making certain verbal objections to the anchal pradhan.

53. I, therefore, hold on the evidence on record that the Mahatoes are residents of Jatrasiddhi or char Jatrasiddhi which is within the district of Hooghly and their names had been correctly recorded in the electoral roll of the Balagarh constituency. Their voting in the election cannot be a ground for setting aside the election of the returned candidate. The answer to issue No. 2(b) is, therefore, against the Petitioner.

Issue No. 3.

54. In para. 8 of the petition various allegations have been made. We have to scrutinize these allegations and to see whether the result of the election has been materially affected by reason of any of the alleged incidents referred to in the said paragraph. In para. 8(a)(i) it is stated that the ballot paper accounts were not properly kept and the ballot papers were neither properly kept nor properly issued. In a ballot box for Booth No. 64 a ballot paper belonging to the Murshidabad polling centre was found.

55. Nilanjan Ganguli, the returning officer, has said that he has no personal knowledge of the allegation that any ballot paper of any other constituency was found. (Q. 83) But Prabir Sengupta, the Petitioner's agent, has deposed that when the counting was going on, one ballot paper of another constituency was found and

when he pointed it out to the Additional District Magistrate, the officer said that it might be a printing mistake. (Qs. 464 to 466, 477 and 478) The Petitioner Abinash Pramanick has also made the same complaint in Q. 109. But in Qs. 116 to 120 he has stated that when objections were raised--

The officer decided that the said ballot paper of the Murshidabad constituency would not be included in counting. Besides that he did nothing.

56. The fact that a ballot paper of another constituency was found in a ballot box used for the Balagarh constituency is certainly an irregularity. But it is clear that since only one such ballot paper was found the result of the election was not materially affected.

57. In para. 8(a)(ii) of the petition it is stated that the number of ballot papers found for counting on the table was less than the number of ballot papers recorded to have been issued on the polling day to the voters.

58. On this point the oral evidence of Prabir Sengupta is that if accounts are taken the difference would come to "at least 10 or 12". He said that it was not possible for any voter to take away any ballot paper without casting his vote: a voter is given a ballot paper and is asked to go to a covered space to affix a seal on that ballot paper indicating his choice of candidate: then the ballot paper is folded and dropped into the ballot box in the presence of the presiding officer: this is the procedure both for the Assembly and Parliamentary constituencies. (Qs. 121 to 131) According to Prabir when ballot papers are issued to one of the voters the next voter has to wait till the voter who has got a ballot paper has actually cast his vote by dropping the paper into the ballot box: he admits that it is possible that such a procedure would result in enormous delay. (Qs. 289 to 300) In Qs. 310 to 315 he has said that at the Dilip Kumar High School which was one of the polling stations he saw in the morning a long queue of voters consisting of 50 or 100 people.

59. Abinash Pramanick has also stated that there was discrepancy between the votes found on the table and the votes recorded to have been polled. According to him the discrepancy was to the extent of 8 or 9 votes. (Qs. 109 to 112 and 121)

60. We now come to the evidence of the returning officer on this point. He has said that sometimes these discrepancies do occur: it may be due to mistakes in the counting of ballot papers, for instance if the serial number is from 50 to 100, the number of ballot papers by mistake may be taken to be 50 and not 51. He has also said that at the peak hours it is possible that a voter may take away his ballot paper without putting it into the ballot box: there is no rule that until one voter who has received a ballot paper has cast his vote, the next person does not get a ballot paper at all: on the contrary, 5 or 6 persons at a time may receive ballot papers and they wait in a queue before the polling compartment and cast their votes one by one. (Qs. 80 to 82)

61. I am inclined to accept the evidence of the returning officer. I reject the testimony of Prabir Sengupta and of Abinash Pramanick that more than one person cannot receive ballot papers at a time. It is probable, as the returning officer has explained, that several persons received ballot papers almost at the same time and they in their turn formed a queue before the polling compartment to cast their votes in secrecy. It is also probable that at the peak hours some of the persons in the queue before the polling compartment might have gone away without casting their votes at all. The returning officer's evidence appears to be more plausible when we look at Rules 38 and 39 of the Conduct of Election Rules, 1961. Under these Rules no elector is allowed to enter a voting compartment when another elector is inside it. But there is no bar to the issue of ballot papers to more than one person at a time. In this connection reference may incidentally be made to the decision of the Madhya Pradesh High Court in Champadevi v. Jamuna Prasad and Ors. 15 E.L.R. 443. It has been observed that the fact that all ballot papers that had been issued to voters have not been accounted for, does not bring the case within the purview of Section 100(1)(d)(iii) of the Representation of the People Act, 1951, as it is possible that the voters who had taken them might not have made use of them.

62. It is clear, therefore, that on the ground alleged in para. 8(a)(ii) the Petitioner herein cannot succeed. In any event, the difference that was noticed by Prabir Sengupta or Abinash Pramanick, was a difference as we have seen above which did not materially affect the result of the election.

63. Then, in para. 8(b) it is alleged that the counting agents of the Petitioner were not alleged to inspect the postal ballots on the day of counting though, according to Rule 54A of the Conduct of Election Rules, 1961, the counting agents are entitled to inspect the cover of the postal ballot.

64. This allegation appears to be without substance. In Rule 56(3) of the Conduct of Election Rules, 1961, a specific provision has been made that before rejecting any ballot paper the returning officer shall allow each counting agent present a reasonable opportunity to inspect the ballot paper but shall not allow him to handle it or any other ballot paper. This is a provision with respect to ballot papers which do not bear the signature or thumb impression or any other identifying mark of the elector. In other words, it relates to a ballot paper which a voter uses at the polling booth, but a postal ballot paper stands on a different footing. On inspection of the postal ballot paper it can be easily found who the elector is. That is why, to preserve the secrecy of the ballot, no such provision has been introduced into Rule 54A which deals exclusively with "counting of votes received by post". The Petitioner is not right in contending that Rule 54A gives his counting agents the right to inspect the cover of the postal ballot. (It was not however explained to me in course of hearing what the Petitioner meant by the word "cover" in para. 8(b): I assume that he meant the ballot paper itself.) It appears that the Madhya Pradesh High Court also reached a similar conclusion in Champadevi v. Jamuna Prasad and Ors. 15 E.L.R. 443.

65. In any event all the rejected postal ballot papers were produced before me at the hearing. I have examined each of them and obtained from the returning officer his explanations for rejection of each of these ballot papers. (Vide deposition of Nilanjan Ganguli, Qs. 142 to 196) I gave an opportunity to counsel for both the parties to put questions to Ganguli on the reasons that he had advanced for rejections of postal ballot papers; but none of the learned Counsel availed himself of this opportunity. I am satisfied on the evidence on record that the postal ballot papers which were rejected were rejected lawfully.

66. In para. 8(c) of the petition it is alleged that many postal ballot papers were not issued in proper time: the result was that many polling officers could not cast their votes: and the result of the election was thereby materially affected. No evidence was adduced before me in support of this allegation.

67. We now come to para. 8(d). Here, the allegation is that about three thousand ballot papers were rejected arbitrarily by the returning officer against the provisions of Rule 56A(2) of the Conduct of Election Rules, 1961, without properly scrutinising the said ballot papers. The Petitioner's case is that, if these ballot papers were accepted, the Petitioner would have been elected by a substantial margin.

68. I gave opportunities to both the parties to inspect all the rejected ballot papers. For days together the inspection was given by an officer of this Court. Ultimately learned Counsel for the Petitioner produced before me only 27 rejected ballot papers which, according to him, should have been accepted by the returning officer as votes cast in favour of the Petitioner. The serial numbers of these ballot papers are as follows:

100441, 103828, 116039, 116629, 117254, 122859, 135797, 139323, 139250, 140186, 151888, 151912, 151886, 124941, 106371, 106401, 106427, 106453, 123405, 117740, 112843, 141726, 118873, 107786, 104191, 162289 and 154977.

69. I can straightway express my inability to accept Mr. Chatterjee's contention with respect to most of the rejected ballot papers: but, I need not decide in this judgment whether these ballot papers were wrongly or rightly rejected. It is enough for me to state that even if these 27 ballot papers had been accepted, the Petitioner would not have been returned. The result of the election has not, therefore, been materially affected by these rejections.

70. In para. 8(f) of the petition it is alleged,

that votes on behalf of some electors who were dead before the said election were cast.

There is no evidence in support of this allegation.

71. The point which was really pressed by learned Counsel for the Petitioner under this issue, is based on the averments in para. 8(e) of the petition. It appears that on

February 21, 1967, when the counting of votes for this constituency had taken place, the Petitioner made three applications to the returning officer for recounting. The first application was at 6-10 p.m., the second application at 6-37 p.m. and the third application at 6-40 p.m. The returning officer has rejected all the three applications. The Petitioner's counsel has strongly urged before me that these applications for recounting should have been allowed particularly having regard to the small margin by which the returned candidate is alleged to have been elected.

72. We have first to consider the relevant provisions of Rule 63 of the Conduct of Election Rules, 1961, which are as follows:

Re-count of votes. (1) After the completion of counting the returning officer shall record in the result-sheets in Form 20 the total number of votes polled by each candidate and announce the same.

(2) After such announcement has been made, a candidate or, in his absence, his election agent or any of his counting agents may apply in writing to the returning officer to recount the votes either wholly or in part stating the grounds on which he demands such recount.

(3) On such application being made the returning officer shall decide the matter and may allow the application in whole or in part or may reject it in toto if it appears to him, to be frivolous or unreasonable.

(4) Every decision of the returning officer under Sub-rule 3 shall be in writing and contain the reasons therefor.

73. The above sub-rules show that when an application is made the grounds for the recounting must be stated in the application itself; Secondly, the returning officer has a discretion to allow or reject the application, wholly or in part, thirdly, the returning officer may reject the application in toto if, according to him, it is frivolous or unreasonable.

74. Mr. Arun Prakash Chatterjee relied on a judgment of the Madhya Pradesh High Court in Inayatullah Khan v. Diwanchand Mahajan and Ors. 15 E.L.R. 219 in support of his case for recounting. It is true that in this case the High Court disagreed with the returning officer and stated that--

The recount which was demanded was refused and we think that, regard being had to the close fight which had taken place between the two candidates, a recount might have been allowed. If a recount had been allowed at that moment, which the law contemplates, there would have been no room for the allegations which the returning officer and the counting assistant have to face.

We know that the instant case also is a case of a close fight; but we have to appreciate that the Madhya Pradesh High Court's conclusions were based on very serious facts. In that case, for instance, from some of the ballot boxes more ballot

papers came out than were expected and in some many less were found. Moreover, Form No. 22 had also been frequently corrected by over-writings and erasers. And the Madhya Pradesh High Court was constrained to observe:

We feel that the rules on this subject, though they are elaborate, should be made more stringent and the penalty for this should be visited not upon the candidates who have run the elections but upon the officers whose duty it is to see that these rules are obeyed. We cannot do better than voice a caution to all officers connected with the running of elections that they act in breach of these rules at their own peril and that if sufficient cause is found for suspecting their bona fides this Court will never hesitate to report against them to their superior officers.

Needless to say that this judgment of the Madhya Pradesh High Court has no application to the facts of this case. There are no allegations here either against the returning officer or his counting assistants.

75. Mr. Arun Prakash Chatterjee also contended that in an application for recounting no grounds need be stated. I do not accept this proposition in view of the unambiguous provision in this behalf in Rule 63 of the Conduct of Election Rules, 1961. I am inclined to agree with the decision of the Election Tribunal, Tiruchirapalli, in *R. Swaminatha v. S. Ramalingam* 2 E.L.R. 51, that a candidate is not entitled to a recount or scrutiny of the ballot papers unless there are sufficient grounds to satisfy the Tribunal that the return was not accurate or that recount and scrutiny are called for in the interest of justice: mere vague and general allegations that the proper procedure has not been followed and that, on a proper counting the Petitioner would be found to have received more votes, are not sufficient: the charges should be definite and must be substantiated by reliable *prima facie* evidence. This decision, I find, was followed by the Election Tribunal, Ahmedabad, in *Shah Sankalchand v. Shukla Damubhai* 12 E.L.R. 184. The Ahmedabad Tribunal observes that a recount of ballot papers is not granted as a matter of right; it will be granted only if there is evidence or facts to show that the counting was not accurate and that a recount and scrutiny are necessary in the interest of justice.

76. It is in the context of these legal principles that we have to approach the facts of this case. In the petition made at 6-10 p.m. Prabir Sengupta the Petitioner's election agent has stated as follows:

I, Prabir Kumar Sengupta...beg to draw your attention that Shri Pramanick has failed to secure majority for only a few votes which fall well within the normal mistake committed by human being.

So, to assure myself, the candidate and the electorate I would humbly appeal for recounting which would help...detect the mistake in counting.

I hope, you would see the interest of the electorate and the candidate and would arrange for recounting.

77. At 6-30 p.m. on February 21, 1967, Prabir Sengupta made his second application for a recount. In this application he states as follows:

I, Prabir Kumar Sen...would request you to recount the vote in the interest of the electorate since it comes to my knowledge that one ballot paper of other constituency has been found in Booth No. 66 of the said constituency for the Parliamentary constituency and difference of actual counting from the Presiding Officer's report has also come to my notice.

I hope you would take notice of it and would arrange for the recounting.

78. In both the above applications, it is obvious, that no substantial grounds for recounting have been stated. In the first application the ground is that the returned candidate has won by a small majority and there might have been a mistake in counting. To my mind, it would be unreasonable to accept the proposition that in every case of a small margin the candidate who has lost can, as a matter of right, ask for a recounting. Moreover, what is a "small margin" is rather difficult to define. In my view the facts that a candidate has won by a small majority may in appropriate cases be an additional ground for an order for recounting; but the principal ground on which such an order is to be based must be something other than a narrow margin.

79. In the second application for recounting Prabir Sengupta has said, (a) that one ballot paper for another constituency has been found in one of the booths in the Balagarh constituency and (b) that there was a difference between the presiding officer's report and the votes actually counted. We have already seen earlier in this judgment that the Petitioner's own case is that the ballot paper for the Murshidabad constituency, which was found in one of the ballot boxes, was rejected. (Qs. 116-120) And the difference in votes that the Petitioner has been complaining of was not more than 9. (Q. 112) These two grounds cannot, therefore, on the facts of this case be urged in support of a recount.

80. Apart from the reasons I have advanced in the foregoing paragraphs there were also other reasons for rejecting the applications for recount and these other reasons have been stated by the returning officer in his order of rejection. I would now set out the returning officer's decisions and the reasons therefor which are as follows:

The ground given by the Petitioner has been raised only after the votes obtained by each candidate have been totalled and the final result sheet is about to be signed after the polling station-wise results have been declared from time to time till the last stage. The counting agents of this candidate as well as the Petitioner himself watched the counting from the outset till the last, but no objection at any stage was taken by them. Only at the last stage when the votes obtained by the candidates are about to be announced when the petition is filed. (At this stage, another petition is also filed.) Having taken into consideration all the circumstances, I am satisfied that this petition is frivolous unreasonable, and hence I reject it. The other petition has

nothing to do in favour of a prayer for recounting, as the ballot paper of another constituency has come by mistake from W.B.G. Press. Hence I also reject this petition. It may also be noted that the contesting candidate himself was present during the counting for almost the whole day except at the closing stage, but no objection whatsoever was taken by him.

81. I am not stating that all the reasons of the returning officer appeal to me. But I am inclined to accept his view that since the Petitioner and his agents were present throughout the counting and had watched the counting booth by booth, mistakes, if any, in counting would have been detected by them and pointed out to the counting officers then and there. The fact that they did not raise any disputes during the counting, showed that they were accepting the decisions of the counting officers. Their silence or failure to raise objections, when the counting was going on, indicates that the mistakes alleged in the two petitions for recounting do not deserve serious consideration. In any event, if any such mistake had been committed, it would have been specifically mentioned in the application for a recount.

82. The third petition for recount was made by Prabir Sengupta at 6-40 p.m. on February 21, 1967. Here he says:

I, ...request you to recount the postal ballot as I have some doubt about this counting. This is also a reason of recounting on behalf of us.

83. So far as the general prayer for recount is concerned the language of this petition is a further proof of the fact that the election agent, in the instant case, was asking for a recount for the sake of recount only. He has stated a "doubt" but the ground on which the doubt is based he has failed to state. His prayer for recount of the postal ballot papers also suffers from the same defect. (In any event the rejected postal ballot papers have already been examined in this Court and the rejections have been found to be valid.) Moreover, I find from the returning officer's order rejecting the third petition that Prabir Sengupta filed the petition after the final result-sheets had been signed. It is clear, therefore, that the third petition was also justifiably rejected.

84. In my view, therefore, there is no case for a recount in the instant petition.

85. The result is that this election petition is dismissed. The Petitioner will pay to the Respondent No. 1 a sum of Rs. 1,500-00 as assessed costs of the petition. The Petitioner will also pay to the Respondent No. 3 the sum of Rs. 500-00 as his assessed costs.