

PETITIONER:
PROF. RAMCHANDRA G. KAPSE

Vs.

RESPONDENT:
HARIBANSH RAMAKBAL SINGH

DATE OF JUDGMENT 11/12/1995

BENCH:
VERMA, JAGDISH SARAN (J)
BENCH:
VERMA, JAGDISH SARAN (J)
SINGH N.P. (J)
VENKATASWAMI K. (J)

CITATION:
1996 AIR 817 1996 SCC (1) 206
JT 1995 (9) 89 1995 SCALE (7) 60

ACT:

HEADNOTE:

JUDGMENT:

WITH

Civil Appeal No. 4430 OF 1994

Pramod Mahajan

V.

Haribansh Ramakbal Singh & Anr.

AND

Civil Appeal No. 4615 OF 1994

Sadhvi Reethambara

V.

Haribansh Ramakbal Singh & Anr.

JUDGMENT

J.S. VERMA, J.

These are appeals under Section 116A of the Representation of the People Act, 1951 (for short "the R.P. Act") by the returned candidate Prof. Ramchandra G. Kapse whose election has been declared void, and by the two notices Pramod Mahajan and Sadhvi Reethambara who have been named under Section 99 of the R.P. Act for committing certain corrupt practices, on the ground of which the returned candidate's election has been set aside. At the election held on 15.6.1991, Prof. Kapse was the BJP candidate for the Lok Sabha from the Thane Parliamentary Constituency and he was declared elected on 17.6.1991 having polled 3,02,928 votes against 2,74,611 votes polled by the respondent who was the Congress (I) candidate. On 1.8.1991, the election petition was filed by the respondent for setting aside the election of Prof. Kapse on the ground of certain corrupt practices. By the impugned judgment dated 15.4.1994 in Election Petition No.6 of 1991, Ashok Agarwal, J. of the Bombay High Court has declared the election of Prof. Kapse to be void on the ground under Section 100(1)(b), and named the notices Sadhvi Reethambara and Pramod Mahajan also under Section 99 of the R.P. Act of being guilty of the corrupt practices under Sections 123(3)

and 123(3A) of the R.P. Act. Even though the operative part of the impugned judgment mentions the corrupt practice under Section 123(2) also in addition to those under Sections 123(3) and 123(3A), but there is no finding against any one for commission of any corrupt practice under Section 123(2). We are, therefore, concerned only with the corrupt practices under Sections 123(3) and 123(3A) of the R.P. Act.

The allegation of corrupt practices made in the election petition was on the basis of three speeches, namely, on 21.5.1991 by Sadhvi Reethambara, on 1.6.1991 by L.K. Advani and on 11.6.1991 by Pramod Mahajan. However, the speech of L.K. Advani made on 1.6.1991 has not been held to be a corrupt practice either under sub-section (3) or sub-section (3A) and the claim in the election petition on that basis has been rejected. The other two speeches have been held to be corrupt practices under Sections 123(3) and 123(3A). It has been held that both these speeches by Sadhvi Reethambara and Pramod Mahajan were made in the presence of Prof. Kapse which proves his consent.

Some facts relating to the first contention on behalf of the appellant may now be stated. On 7.8.1992 when Prof. Kapse was being examined as a witness, some questions put to him in his examination-in-chief indicating his personal absence in the meeting held on 21.5.1991 wherein the alleged speech of Sadhvi Reethambara was made, were disallowed by the court taking the view that there was no specific denial of his presence in that meeting in his written statement. This led to an application for amendment of written statement to expressly deny the presence of Prof. Kapse in that meeting and to plead his presence at some distant place at that time. That application was dismissed on 10.8.1992. A special leave petition in this court against that order was dismissed on 27.8.1992 obviously for the reason that no interference was considered appropriate at an interlocutory stage in the trial. The deposition of Prof. Kapse was then concluded and his evidence was closed on 7.9.1992. Thereafter on 24.9.1992, notices under Section 99 of the R.P. Act were given to Sadhvi Reethambara and Pramod Mahajan. In March 1993, Sadhvi Reethambara filed her reply denying the commission of any corrupt practice in making her speech and she also denied the presence of Prof. Kapse in her meeting on 21.5.1991. The noticee Sadhvi Reethambara also made an application for calling some evidence to prove the absence of Prof. Kapse from her meeting on 21.5.1991 and his presence at that time at a distant place. Obviously, this was a ground taken by the noticee to prove the absence of consent of the candidate for her speech because even if the language of her speech satisfied the other requirements of the definition of corrupt practice, it could not be a corrupt practice under sub-section (3) and/or (3A) of Section 123 for the purpose of this election petition without the consent of the candidate Prof. Kapse. The High Court rejected that application of the noticee on 8.4.1993. The noticee's special leave petition to this Court on 12.5.1993 was dismissed obviously because no interference in the trial at this stage was considered appropriate. The arguments in the election petition were concluded on 12.4.1994. The operative order allowing the election petition and declaring the election of Prof. Kapse to be void was made by Agarwal, J. on 15.4.1994.

The pleading with regard to the speech of Sadhvi Reethambara on 21.5.1991 is in para 11 of the election petition which is as under :-

"The Thane MAHANAGRI EXPRESS, Hindi newspaper is well read in Thane. The

respondent invited the said Sadhvi Ritambara at Thane. He himself chalked out her programme. As per the invitation given by him to come and canvass for him in his constituency, she came to Thane on 21st May 1991. A meeting was held at Shivaji Maidan, Ambholi Naka, Thane at about 8.30 A.M. on the 21st May 1991. In the whole constituency and announcement was made over the vehicles, auto-rickshaws etc. engaged by the respondent or his workers with his consent, announcing that Sadhvi Ritambara was going to address the meeting in support of the respondent. Advertisements were given in the newspapers about the said meeting in Novbharat Times dt. 19.5.91. The petitioner had asked his following workers to attend the said meeting and to note down the substance of her speech:

1. B.N. SINGH
2. KALYAN RAI
3. DILIP NAKHVA

Accordingly the said workers attended the meeting. The report appeared in the next day in the morning. She appealed at length. The respondent welcomed her and voters who attended the meeting. The meeting was well attended. The respondent after welcoming her, sat in the audience. Whenever she made a reference to the Hindu religion and to the fact that the BJP-SHIV SENA candidate should be voted as they were standing for protecting the Hindu religion. The section of public including the respondent got up."

(emphasis supplied)

The earlier reference in para 10 of the election petition is to another speech of Sadhvi Reethambara at Nagpur which is irrelevant for the purpose of this is as under:-

"25.

..... In any event the said Ritambara Devi is in no way concerned with the present respondent and her acts and deeds are in no way relevant for the decision of the present petition on merits of the case.

26. With reference to paragraph 11 of the petition, this respondent denies that he had invited the said Ritambara Devi at Thane or that he had chalked out her programme or that she was invited to come and canvass for the respondent in his constituency or that in such circumstances she came to Thane on 21.5.1991. All the said allegations are wholly baseless and false. The petitioner is put to the strict proof of the alleged meeting held at Thane on 21.5.1991 and that and announcement of that meeting was made in the town with the aid of auto-rickshaw allegedly

engaged by the respondent or his workers with his consent. It is not true that the respondent had done anything as alleged in para 11. The respondent does not admit that is attributed to Ritambara Devi as a part of her speech. The respondent does not admit the contents of Exhibit B or B-1, B-2 and B-3. The respondent states that he had nothing to do with the alleged meetings or the movements of the said Ritambara Devi. In any event all the said allegations are wholly unconnected with the respondent and hence the election of the respondent cannot be challenged on the allegations made in para 11 of the petition."

"41. With reference to para 24(b) this respondent denies that the respondent at any time had invited Ritambara Devi to canvass for him in public meeting on 21.5.1991. It is not true that the respondent was present in the meeting of the office bearers or that it was decided to invite Ritambara DEVi. The respondent denies that expressly or impliedly he had consent to the alleged offending speeches of Ritambara Devi."

(emphasis supplied)

The contention of the election petitioner which was accepted by the High Court is reiterated at the hearing before us that the above pleading amounts to an implied admission of the personal presence and participation of Prof. Kapse in the meeting held on 21.5.1991 at Shivaji Maidan, Thane between 8.30 a.m. and 10.00 a.m. amounting to his consent, and, therefore, Prof. Kapse was rightly denied permission to adduce evidence of his absence in that meeting and presence elsewhere at that time. The High Court's view is that this pleading amounts to an implied admission by Prof. Kapse of his personal presence and participation in the meeting of Sadhvi Reethambara on 21.5.1991 on account of which his consent for the entire speech of Sadhvi Reethambara is proved.

Apart from the question whether the pleadings have been correctly construed to take this view in respect of Prof. Kapse, the further question is whether the noticee Sadhvi Reethambara could be denied the opportunity at the inquiry held under Section 99 to plead and prove the absence of Prof. Kapse from her meeting as a part of her defence. If the noticee under Section 99 has an independent right to plead and prove the want of any constituent part of the corrupt practice of which he is liable to be named under Section 99 of the R.P. Act, visiting him with penal consequences in addition to the penal consequences which ensue to the returned candidate, then the denial of that opportunity to the noticee is itself sufficient to vitiate the inquiry made under Section 99. Since denial of this opportunity to the noticee Sadhvi Reethambara is for the same reason for which it was denied to the returned candidate Prof. Kapse, namely, the view taken that there was no specific denial in the written statement of Prof. Kapse of his personal presence at that meeting, this question with reference to its effect on the case of the noticee may first be examined.

Bare perusal of Section 99 leaves no doubt that the

noticee has an independent right to show cause why he should not be named thereunder as a person guilty of any corrupt practice, apart from the right which the candidate has to defend himself as a respondent in the election petition. This right of the noticee is the same as that of a person who is a party to the petition and resort to Section 99 becomes necessary only when the noticee thereunder is not already a party to the petition and there is a likelihood of he being named as a person guilty of any corrupt practice. Section 99 of the R.P. Act is as under :-

99. Other orders to be made by the High Court. - (1) at the time of making and order under section 98 the High Court shall also make and order-

(a) Where any charge is made in the petition of any corrupt practice having been committed at the election, recording-

(i) a finding whether any corrupt practice has or has not been proved to have been committed at the election, and the nature of that corrupt practice; and
(ii) the names of all persons, if any, who have been proved at the trial to have been guilty of any corrupt practice and the nature of that practice; and

(b) fixing the total amount of costs payable and specifying the persons by and to whom costs shall be paid:

Provided that a person who is not a party to the petition shall not be named in the order under sub-clause (ii) of clause (a) unless -

(a) he has been given notice to appear before the High Court and to show cause why he should not be so named; and

(b) if he appears in pursuance of the notice, he has been given and opportunity of cross-examining any witness who has already been examined by the High Court and has given evidence against him, of calling evidence in his defence and of being heard.

(2) In this section and in section 100, the expression "agent" has the same meaning as in section 123."

The proviso in sub-section (1) of Section 99 makes it clear that the noticee has the same opportunity as a party to the petition and this is in addition to the right of the returned candidate who is a party to the petition. Even if the candidate as a party to the petition omits to deny the existence of any constituent part of the corrupt practice, it is open to the noticee under Section 99 who has an independent right to do so, for the purpose of showing that all the constituent parts of the corrupt practice are not made out on account of which the corrupt practice alleged is not proved and, therefore, he cannot be held guilty of that corrupt practice and named under Section 99 of the R.P. Act. In a case where the candidate does not deny the existence of any constituent part of the corrupt practice, but the noticee makes the denial, the court cannot refuse to permit the noticee to make the denial and prove it by adducing evidence as a part of the noticee's defence. The credibility of the noticee's version and the probative value of his evidence, in the absence of any denial by the candidate, is

a different aspect which lies within the domain of appreciation of evidence but the noticee cannot be shut out at the threshold by refusing him this opportunity, even if the candidate has not availed of the same or has omitted to make that denial for any reason. Nothing of any significance to require a specific mention was said on behalf of the respondent to doubt the correctness of this proposition which is so obvious.

It is difficult to appreciate how the High Court could reach a different conclusion and on its erroneous impression deny to the noticee the right she had to plead and prove the absence of the candidate Prof. Kapse from her meeting and the want of the candidate's consent for her speech, in order to show that the alleged corrupt practice was not made out for want of an essential constituent part thereof on account of which she could not be held guilty for the commission of any corrupt practice. It was for the High Court after giving her the opportunity contemplated by the proviso to sub-section (1) of Section 99 to have ultimately formed its opinion whether her version could be accepted or not. That stage, however, did not reach because of the error committed at the threshold of the inquiry made under Section 99 of the R.P. Act by denial of this opportunity to the noticee. It must also be borne in mind that the election petition is based on the ground under Section 100(1)(b) and not Section 100(1)(d)(ii) of the R.P. Act.

We would also indicate later that the pleadings have been misconstrued to read therein an implied admission when there is a denial in the written statement.

It is, therefore, obvious that the order naming Sadhvi Reethambara under Section 99 for commission of the corrupt practice is vitiated for the above reason alone and the order made against her has to be set aside. The question now is of the effect of this conclusion.

It has now to be seen whether an implied admission of the averment in the election petition of Prof. Kapse's presence and conduct at the meeting of Sadhvi Reethambara at Thane on 21.5.1991 can be read in his written statement on the ground of non-traverse by virtue of Order 8 Rule 5(1) C.P.C. To support the view taken by the High Court, Shri Ashok Desai, learned counsel for the respondent strenuously urged that the implied admission of the allegation made in para 11 of the election petition flows from the absence of a specific denial of the relevant facts alleged in para 11 of the election petition. The pleadings on the point have been quoted earlier. In para 11 of the election petition, the material facts pleaded for this purpose are: Visit of Sadhvi Reethambara to Thane on 21.5.1991 on invitation of Prof. Kapse; meeting at Shivaji Maidan, Thane at about 8.30 a.m. on 21.5.1991 at which Prof. Kapse welcomed her and was then present in the audience; and appreciation by Prof. Kapse and the audience whenever she made a reference to the Hindu religion and to the fact that the BJP-Shiv Sena candidate should be voted as they were standing for protecting the Hindu religion. These are all the material facts pleaded in this behalf in the election petition for the purpose of pleading the consent of Prof. Kapse to the contents of the speech given by Sadhvi Reethambara which is alleged to constitute the corrupt practice.

In *Badat and Co. vs. East India Trading Co.*, 1964 (4) SCR 19, it was held that Rules 3,4 and 5 of Order 8 of C.P.C. form an integrated code dealing with the manner in which allegations of fact in the plaint should be traversed and the legal consequences flowing from its non-compliance. It was held that the written statement must deal

specifically with each allegation of fact in the plaint and when a defendant denies any such fact he must not do so evasively but answer the point of substance. If his denial of a fact is not specific but evasive, the said fact shall be taken to be admitted of which no other proof is necessary unless the court in its discretion under the proviso to Rule 5 requires any fact so admitted to be proved otherwise than by such implied admission. The requirement, therefore, is that the denial should be made of the point of substance to amount to a specific denial of the allegation of fact. The written statement has to be read as a whole to see whether any implied admission can be spelled out therefrom.

In the above-quoted portions extracted from the written statement, there is specific assertion that Sadhvi Reethambara was in no way concerned with Prof. Kapse (respondent in the election petition) and her acts and deeds were not relevant; Prof. Kapse had not invited her at Thane on 21.5.1991 and such allegations were wholly baseless and false; it was denied that Prof. Kapse had done anything as alleged in para 11 of the election petition; the part attributed to Sadhvi Reethambara was denied by Prof. Kapse who had nothing to do with the alleged meetings or movements of Sadhvi Reethambara; and it was denied that expressly or impliedly he had consented to the alleged offending speeches of Sadhvi Reethambara. These are some of the specific assertions made by Prof. Kapse in his written statement and reply to the allegations made in the election petition based on the speech of Sadhvi Reethambara. The conduct attributed to Prof. Kapse including his personal presence and the act of welcoming Sadhvi Reethambara at that meeting and appreciating her utterances were all made for pleading consent of Prof. Kapse to the act of Sadhvi Reethambara by necessary implication. In such a situation, the point of substance was the consent of Prof. Kapse to be implied from his conduct in inviting and welcoming Sadhvi Reethambara at that meeting and appreciating her utterances. The specific assertion by denial enumerated earlier including the specific denial of his consent can leave no doubt that there is no room for reading in the written statement of Prof. Kapse an implied admission of the kind read by the High Court. The fact of physical presence was just one circumstance alleged for implying the consent. When the alleged consent was denied to have been given either expressly or by implication and it was asserted that he was in no way connected with any act of Sadhvi Reethambara or responsible for any of her actions, the denial contemplated under Order 8, Rule 5, C.P.C. was clearly made. At any rate, there is no occasion to read any implied admission of any averment in para 11 of the election petition by non-traverse. The High Court was clearly in error in reading any admission by Prof. Kapse in his written statement of any averment of fact contained in para 11 of the election petition.

Moreover, in view of the denial of the averments made in para 11 of the election petition relating to the allegation of corrupt practice based on the speech of Sadhvi Reethambara, it was permissible for Prof. Kapse to lead evidence to prove his presence elsewhere at that time to improbabilise the allegation of his personal presence in the meeting addressed by Sadhvi Reethambara at Thane on 21.5.1991. This could be done even without any specific averment to that effect in the written statement since it was a relevant fact of which evidence could be led under Section 11 of the Indian Evidence Act. The fact that evidence is led for proving presence at that time elsewhere

to improbabilise the allegation made in the petition without any express pleading to that effect in the written statement, may be of significance only to assess the probative value of such evidence but the evidence cannot be shut out as irrelevant or inadmissible. The High Court's order refusing permission to Prof. Kapse to lead that evidence and thereafter to amend the written statement for making a clear assertion to this effect is contrary to law. The finding on this question even against the returned candidate Prof. Kapse is, therefore, vitiated due to this defect. The express denial by Prof. Kapse in his statement of his presence in the meeting at Thane on 21.5.1991 cannot be rejected. The implied admission read in the written statement of Prof. Kapse has earlier been rejected by us. There is no reliable evidence to prove the alleged conduct of Prof. Kapse which was relied to prove his consent for the speech of Sadhvi Reethambara, irrespective of the nature of her speech. This alone is sufficient to reject the finding of the High Court that any corrupt practice is proved to have been committed by Prof. Kapse on the basis of that speech.

The effect of this conclusion would be considered after consideration of the only remaining point, namely, the finding relating to the corrupt practice based on the speech of Pramod Mahajan.

The allegation of corrupt practice based on the speech of Pramod Mahajan is contained in para 13 of the election petition which is as under:-

"Similarly Pramod Mahajan, All India General Secretary of BJP was also invited by the respondent to visit his constituency and to canvas for him during the course of electioneering, so that the prospects of his winning the election would improve. As per the said invitation and as per the programme chalked out by the respondent and his workers with his consent, Pramod Mahajan visited the constituency. A meeting was held on the 11th June 1991 at Kalyan Chowk Kalyan (West) at about 10 p.m. The petitioner's following workers attended the said meeting:

1. DAULAT SINGH PALIWAL
2. R. B. SINGH
3. DR. UDAY SAMEL.

Pramod Mahajan stated in his speech that secularism preached by other political parties was only a pretense. He stated that the other parties were appeasing the Muslim minority for the sake of votes. He appealed to the voters to elect the Government which believed in devotion to Shri Ram. The respondent was present in the said meeting. The respondent was present in the said meeting. The respondent was sitting on the dias when Pramod Mahajan gave his speech. Mahajan further stated that for prestigious Hindustan and for the construction of Ram Temple (at Ayodhya) voters should elect the respondent who was the candidate of BJP. The area of Kalyan Chowk, Kalyan (West) falls under Kalyan Police station. The police

officials has also attended the said meeting. The petitioner has learnt that a record has been kept in the form of election diary about the said meeting. The petitioner will examine the officers of Kalyan Police Station, who attended."

The reply of Prof. Kapse in his written statement is contained in para 29 as under:-

"With reference to paragraph no. 13 of the petition, this respondent does not admit that Mr. Pramod Mahajan was invited by him to visit the constituency. It is however, true that he had taken part in the election campaign in the respondent's constituency and had addressed a meeting. It is, however, not true that he said in his speech that secularism preached by other political parties was only a pretence or that the other parties were appealing the Muslim minority for the sake of votes.

The petitioner is put to the strict proof of the said allegations. This respondent, however, states that the portions of speeches quoted by the petitioner are out of context and hence misleading. It is also not true that Mr. Mahajan appealed to the voters to elect the Govt. which believed devotion of Ram. The petitioner is put to the strict proof that the respondent was present at that time. The respondent does not admit that Mr. Mahajan further stated that for prestigious Hindustan and for the construction of Ram Temple voters should elect the respondent are wholly baseless and out of context. The respondent is not aware whether there is any such record about the said speeches with the police."

It was specifically denied in the written statement that appeal to voters was made to elect the Government which believed in devotion to 'Ram' or that the appeal was made on the ground of Hindu religion.

The finding of the High Court on appreciation of the evidence adduced at the trial on this point may be summarised with reference to certain extracts from the impugned judgment which are as under:-

"90.

xxx xxx xxx
.....As far as Shri Pramod Mahajan's speech is concerned, I am not inclined to place the reliance on the oral testimony of the party workers of the petitioner. However, I find that the police report in respect of the speech, at Exhibit-J gives a reasonably fair report in regard to the speech."

"116. I further find that Shri Pramod Mahajan who is All India Secretary of the BJP has in his speech given on 11th June, 1991 at Kalyan Chowk, Kalyan (W) asked for votes in favour of the respondent in the name of

Hindu Religion, which is the religion of the respondent, and this falls within the mischief of section 123 (3) of the Act. I further find that he has promoted or attempted to promote feelings of enmity or hatred between different classes of citizens of India on grounds of religion and this falls within the mischief of Section 123 (3A) of the Act. This he has done by his being an Agent of the Respondent. This he has done with the consent of the respondent.

117. I further find on the evidence of Shri Pramod Mahajan himself that the election manifesto of the BJP which are at Exhibites 3 and L, on his own showing tends to create enmity between Hindus and Muslims, and this falls within the mischief of the provisions of section 123 (3A) of the Act. Hence the election of the respondent is liable to be set aside and Shri Pramod Mahajan is liable to be named as a collaborator in the aforesaid electoral malpractices."

Thereafter in para 120 while rejecting the stay application at the end of the impugned judgment, it has been stated thus

"..... In the instant case, the respondent as also both the notices have admitted that appeals were made by them in the name of Hindu religion which is the religion of the respondent. It is also admitted by all the three that appeals for votes were made in the name of Ram Janambhoomi - Babri Masjid. The said issue was raised as per the manifesto of the BJP. The said Manifesto recites that after partition Hindus and Muslims who are blood brothers have not even remained friends. The issue of Ramjanambhoomi was raised in this context."

We have earlier quoted the entire pleadings on this aspect. There is nothing in the averments contained in para 13 of the election petition which contains the pleading on this point that the contents of the manifesto of the B.J.P. was also a basis for pleading this corrupt practice and that the candidate Prof. Kapse was guilty of corrupt practice for the contents of the B.J.P. Manifesto. The above extracts from the impugned judgment show that the manifesto of the B.J.P. is a strong basis for finding the candidate guilty of this corrupt practice and that too without any such basis being pleaded in the election petition. There is also reference to admission by Pramod Mahajan and the appellant that appeal for votes was made in the name of Hindu religion. The admission is spelt out on the basis of the manifesto of the B.J.P. of which he was a candidate. It is difficult to appreciate how and where such admissions were found by the High Court in the depositions of the appellant Prof. Kapse and Pramod Mahajan.

Registration with the Election Commission as a political party for the purposes of the R.P. Act is made in accordance with Section 29-A of the R.P. Act. Sub-section (5) of Section 29-A requires the memorandum or rules and regulations of the association or body to contain a specific

provision that it shall bear true faith and allegiance to the Constitution of India as by law established, and to the principles of socialism, secularism and democracy, and would uphold the sovereignty, unity and integrity of India. Sub-section (7) requires the Commission to register it as a political party only after its satisfaction that these requirements are fulfilled. Admittedly, B.J.P. had been so registered as a political party and continues to be registered as a political party under this provision. In such a situation, contesting as a candidate of BJP could not be faulted and any part of its manifesto could not by itself be held to form the basis of holding a B.J.P. candidate guilty of a corrupt practice when no part in its drafting or specific use in the campaign is attributed to the candidate in the pleading or evidence. Ex facie contents of a manifesto, by itself, cannot be a corrupt practice committed by a candidate of that party. In this context, reference to the decision in Kultar Singh Vs. Mukhtiar Singh, 1964 (7) SCR 790 at 793-795, is useful.

We would now consider the evidence to prove this corrupt practice at the trial. The entire evidence in support of the allegation comprises of the testimony of Daulat Singh Paliwal (PW-6), Uday alias Prashant Laxman Samel (PW-7), Ram Bachan Singh (PW-8) and Police Inspector Suhans Bhattachandra Phadke (PW-4), in addition to Exhibits J/J-1. The High Court has rejected the evidence of PW-6, PW-7 and PW-8 as unreliable. That leaves only the testimony of PW-4 S.B. Phadke and the document Exhibits J/J-1. The first question is whether the testimony of PW-4 or the contents of the document Exhibit J can be treated as substantive or legal evidence to prove any part of the speech of Pramod Mahajan. The submission of Shri Venugopal, learned counsel for Prof. Kapse and Shri Jethmalani, learned counsel for Pramod Mahajan is that it is not legal evidence. In the alternative, it was urged that the testimony of PW-4 S.B. Phadke also is not reliable and should be rejected and Exhibit J is innocuous and does not prove anything to constitute the alleged corrupt practice.

S.B. Phadke (PW-4), a Police Inspector in the Special Branch at Kalyan, has stated that he was required to attend election meetings and submit reports of those meetings. He stated that report Ex. J was scribed by a Head Constable and was signed by him, but he does not recall who was that Head Constable. That Head Constable has not been examined. He also stated that he was taking down notes during the meeting and after preparation of the report, those notes were destroyed. The translation of the original Ex. J is marked Ex. J-1 and it was admitted in evidence subject to objection relating to its admissibility. This is the entire statement of S.B. Phadke (PW-4). The witness did not depose to any fact relating to the meeting or any speech given therein and he did not even name any of the speakers at that meeting. The scribe of the document Ex. J has not been examined even though PW-4 has said that it was signed by him. The testimony of PW-4 read as a whole proves nothing even if it is taken at its face value.

There is thus no witness who has deposed to the fact of Pramod Mahajan giving a speech and the contents thereof. No particular portion of the alleged speech of Pramod Mahajan has been proved to show that there was any appeal made for votes on the ground of religion, much less any particular religion. Emphasis in the contents of the report of the speech of Pramod Mahajan in Ex. J/J-1 is on the functioning of Janata Dal on the basis of caste and religion; the need for a common rule and law for all in the country; criticism

of the manner in which the country was being administered for quite some time; and a note at the end of the report that the meeting terminated peacefully without any untoward incident. Even if the report Ex.J/J-1 is looked into without any witness deposing about the contents of the alleged speech of Pramod Mahajan or even proving the making of any speech by Pramod Mahajan in the evidence adduced in support of the election petition, there is nothing therein to hold that any appeal was made by the candidate or anyone else with his consent on the ground of his religion to make out the corrupt practice under sub-section (3) of Section 123. The note at the end of the report Ex.J/J-1 that the entire meeting was peaceful without any untoward incident also tends to negative an essential ingredient of the corrupt practice under sub-section (3A) of Section 123. It may be mentioned that there is no mention of the word "Hindutva" or Hindu religion in the report of the speech at any place. This alone is sufficient to indicate that the evidence led in support of the election petition does not make out the corrupt practice either under sub-section (3) or sub-section (3A) of Section 123.

We may now refer to the statement of Prof. Ramchandra Ganesh Kapse (RW-1). He has expressly stated that he did not know anything about the meeting of Sadhvi Reethambara in Thane on 21.5.1991 and that he was out of his constituency on that day being present in Dahanu Parliamentary Constituency where he had gone for the election campaign of the B.J.P. candidate from that constituency. He had also stated that he never heard any speech of Sadhvi Reethambara. He has then stated that he or his workers had not invited Pramod Mahajan to attend the meeting on 11.6.1991 in Kalyan. He has also stated that Pramod Mahajan did not speak of Hindutva or Hindu Rashtra, nor did he invoke the voters as Hindus to vote for B.J.P. He then says that Pramod Mahajan spoke of the problems of poverty, population and education, etc. He has stated these facts from personal knowledge adding that he was present in that meeting. He added that none of the speakers had asked for votes in the name of Hindutva or in the name of Ram or Ramjanambhoomi. In his speech, he spoke only of the work he had done as an M.P. and also of his future plans. He has been cross-examined at length about the meaning of "secularism" which according to him is equality of all religions. He was also cross-examined about his concept of different religions. There is nothing in his cross-examination to detract from the merit of his version relating to the meeting of 11.6.1991 at Kalyan and his version of the speech of Pramod Mahajan or his own speech. The roving cross-examination in general about the religion is wholly irrelevant for the purpose of the charge which was levelled against him.

Pramod Mahajan also appeared as a witness. According to him, in his speech made on 11.6.1991 at Kalyan he commented on the policy of the other political parties and made his criticism of the same. According to him, he said nothing to seek votes on the ground of Hindu religion or to support Hindutva. He criticised misrule of the Congress (I) for several decades. According to him, he said that for centuries, Hindus, Muslims and members of other communities have been living as brothers and sisters and by and large it is so. He also said that ours is a secular country and that the state has no religion and it is not true that he and his party believe that India belongs to Hindus alone, since it belongs to all. This is the sum and substance of his deposition.

We have considered the entire evidence on the point and

we find that the evidence led in support of the election petition which has already been discussed does not prove the commission of any corrupt practice either under sub-section (3) or sub-section (3A) of Section 123. On the other hand, Prof. Kapse and Pramod Mahajan have appeared as witnesses and denied the allegation. There is thus no legal evidence to support the allegation of corrupt practice based on the alleged speech of Pramod Mahajan. The finding of the High Court accepting the allegation and holding that a corrupt practice is proved, is clearly untenable and must be set aside.

The finding of High Court that corrupt practices are proved is based essentially on the understanding of the manifesto of the B.J.P. which is not even pleaded as the basis of the allegation, and its erroneous assumption that there are admissions that appeals were made in the name of Hindu religion which is the religion of the appellant. This is wholly untenable. There is also no legal evidence to prove the allegation of corrupt practice. The argument of learned counsel for the appellant and notice that the High Court's judgment is based on certain notions and impressions instead of the material on record, cannot be treated as baseless. It is surprising how the election was set aside on such scanty material.

Consequently, the appeal of the returned candidate as well as the appeals of the notices are allowed. Appellant Prof. Ramchandra G. Kapse and the notice Pramod Mahajan will get their costs throughout from the respondent (election petitioner). The other notice Sadhvi Reethambara will bear her own costs since she did not appear as a witness to personally rebut the allegation made against her.