

594

SUPREME COURT CASES

(1972) 2 SCC

as per the Makkathayam rule of inheritance an undivided brother of a deceased person succeeded to the self-acquired property of the deceased in preference to the wife and daughter of the deceased. If that is so the daughter's son who comes after them under the general Hindu law cannot have a superior claim unless a custom to that effect is pleaded and proved. Such a custom is neither pleaded nor proved.

12. No other contention was raised before us.

13. In the result these appeals fail and they are dismissed. But in the circumstances of the case we direct the parties to bear their own costs in this Court.

**(1972) 2 Supreme Court Cases 594**  
*(From Madras High Court)*

[BEFORE K. S. HEGDE, A. N. GROVER AND D. G. PALEKAR, JJ.]

N. S. VARDACHARI

Appellant;

*Versus*

G. VASANTHA PAI AND OTHERS

Respondents.

Civil Appeal No. 586 of 1971†, decided on August 21, 1972

**Constitution of India—Article 171(3)—Whether candidate for election need be member of the same electoral college.**

**Election—Representation of People Act, 1951—Section 123(4)—Corrupt practice—Election in Graduates' Constituency—Candidate propagating that his opponent is not qualified to contest—Fact or opinion—Whether amounts to statement of fact.**

**Election—Representation of People Act, 1951—Section 123(2)—Corrupt practice—Undue influence—Whether candidates in elections can raise issues other than political issues.**

**Election—Graduates' Constituency—Whether a non-party constituency—Constitution of India—Article 173—Representation of People Act, 1951—Sections 5 to 10-A.**

**Election—Graduates' Constituency—Whether non-graduate otherwise qualified can be candidate in Graduates' Constituency.**

In an earlier election for a seat of Graduates' Constituency, the High Court had held one R. N. Seshadri, the returned candidate to be guilty of corrupt practice mentioned in Section 123(5) of the Representation of People Act, 1951. The High Court, however, held that the election to the Legislative Council from the concerned Graduates' Constituency was a non-party election. The Supreme Court while affirming the findings of the High Court did not consider the question whether the said election was a non-party election.

The respondent, a candidate in a subsequent election from the same constituency, persisted in propagating, after the Supreme Court's decision in Seshadri's case, that his opponent's candidature had been sponsored by a political party and that apart he being a non-graduate was not qualified to be a candidate in the election.

The respondent having won the election, the appellant, an elector in the constituency, challenged the election on the ground of corrupt practices mentioned in sub-sections (2) and (4) of Section 123 of the Act.

†Appeal under Section 116-A of the Representation of the People Act, 1951, from the Judgment and Order, dated December 15, 1970, of the Madras High Court in Election Petition No. 2 of 1970.

**Held:**

- (i) The respondent's propaganda that his opponent was not qualified to be a candidate, was only an opinion. An opinion, much less an opinion on a question of law cannot be considered as a statement of fact. Further his opinion cannot be said to be either not bona fide or groundless as the same was accepted as correct by the High Court of Tamil Nadu in the election petition filed against his opponent though that decision was reversed by Supreme Court in *G. Narayanaswami v. G. Pannerselvam*. Hence the charge under Section 123(4) fails. (Para 10)

*Guruji Shrihar Baliram Sivastode v. Vithalrao*, (1969) 2 SCR 766 : (1969) 1 SCC 82, *relied on*.

*G. Narayanaswami v. G. Pannerselvam*, (1972) 2 SCC xxiii.

- (ii) A debate whether a candidate is qualified to stand or whether a political party is competent to nominate candidates for a particular constituency can not be undue influence within the meaning of Section 123(2). Candidates in elections are not only entitled to raise political issues, they can also raise social, economic and legal issues. The fact that a contention is untenable does not convert it into an undue influence. (Para 12)

*S. K. Singh v. V. V. Giri*, (1971) 2 SCR 197 : (1970) 2 SCC 567, *relied on*.

The respondent was entitled to place his viewpoints before the electorate and even tell them that if his opponent is elected he may challenge his election. The respondent made no attack on the character of his opponent. (Para 14)

- (iii) It is erroneous to conclude that the Graduates' Constituency is a non-party Constituency. There is no reference to political parties either in our Constitution or in the Act. The political parties come into the picture indirectly though they have an important place in our political set-up. Our Constitution and the Act refer to candidates as such and not to the parties to which they belong. (Para 16)

- (iv) It may look anomalous that a non-graduate should be a candidate in a Graduates' Constituency. But if a candidate possesses the qualifications prescribed and has not incurred any of the disqualifications mentioned in the Constitution or in the Act other considerations become irrelevant. (Para 18)

When elections are held under clauses (a), (b) and (c) of sub-article (3) of Article 171, the person to be elected need not be one who is a member of the electoral college in question. The candidate may either be a member of the electoral college in question or even an outsider. This question is no more *res integra*. (Para 19)

*G. Narayanaswami v. G. Pannerselvam*, (1972) 2 SCC xxiii.

Thus, there is no legal objection for any political party sponsoring candidates to the seats in the Legislative Councils. (Para 20)

- (v) Penal costs imposed by trial court on respondent, set aside. (Para 21)

**Appeal dismissed.**

**Advocates who appeared in this case:**

<i>R. M. Seshadri</i> , Senior Advocate ( <i>K. C. Agarwala</i> , <i>E. C. Agarwala</i> and <i>A. T. M. Sampath</i> , Advocates, with him)	for Appellant ;
<i>S. V. Gupta</i> , Senior Advocate ( <i>S. S. Javali</i> , <i>P. C. Bhartari</i> , <i>J. B. Dadachanji</i> and <i>Ravinder Narain</i> , Advocates of <i>M/s. J. B. Dadachanji &amp; Co.</i> , with him)	for Respondent No. 1.
<i>S. S. Khanduja</i> , Advocate and <i>Vineet Kumar</i> , Advocate	for Respondent No. 2.

The Judgment of the Court was delivered by

**Hegde, J.**—This is an election petitioner's appeal under Section 116-A of the Representation of the People Act, 1951 (to be hereinafter referred to as the Act). It relates to the election to the Tamil Nadu Legislative Council from the Madras City Graduates' constituency. The election was held on April 11, 1970. Seven candidates contested in that election. The election was according to the principles of proportional representation by means of single transferable vote. The Madras City Graduates' constituency was a two-member constituency. The 1st respondent, Vasantha Pai was declared elected in the first count itself. The second respondent, Narayanaswamy was declared elected in the second count. The election of Vasantha Pai was challenged by the appellant Vardachari who is an elector in the constituency in question on the ground that Vasantha Pai was guilty of corrupt practices mentioned in sub-sections (2) and (4) of Section 123 of the Act. The High Court came to the conclusion that the petitioner has failed to make out his case and consequently dismissed the election petition. Hence this appeal.

2. The charges levelled against Vasantha Pai are: (1) that he (Vasantha Pai) falsely carried on propaganda to the effect that the High Court of Madras had decided in an earlier election petition between him and R. N. Seshadri that the constituency in question is a non-political and Narayanaswamy having been sponsored by the Swatantra Party any votes given to him will amount to "throwing away" of the votes and (2) that Narayanaswamy being a non-graduate was not qualified to be a candidate at the election.

3. It may be noted at this stage that Vasantha Pai did object to the candidature of Narayanaswamy before the Returning Officer on the two grounds mentioned earlier. The Returning Officer rejected those objections holding that there was no material before him to show that Narayanaswamy had been sponsored by the Swatantra Party and further that in his view a non-graduate is not disqualified from seeking election from a graduate constituency. Even after the Returning Officer rejected the contentions of Vasantha Pai, he admittedly carried on the propaganda referred to earlier by publishing leaflets as well as appeals in the newspapers.

4. Section 123 enumerates what are corrupt practices for the purposes of the Act. Sub-section (2) of that section to the extent material for our present purpose reads:

"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."

(The proviso is not relevant for our present purpose.)

Sub-section (4) thereof says:

"The publication by a candidate or his agent or by any other person, with the consent of a candidate or his election agent of any statement of fact which is false, and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate, or in relation to the candidature or withdrawal of any candidate, being a statement reasonably calculated to prejudice the prospects of that candidate's election."

5. Before examining the points in issue, it is necessary to set out a few more facts.

6. In 1967 a seat in the Madras City Graduates' constituency fell vacant. For that seat election was held on August 21, 1967. In that election Vasantha Pai was one of the contestants. One of the other contestants was R. N. Seshadri. R. N. Seshadri was declared elected having secured the highest number of votes. Thereafter Vasantha Pai challenged the validity of the election of Seshadri on various grounds. One of the grounds taken by Vasantha Pai was that in an election from Graduates' constituencies political parties were not competent to sponsor candidates, Seshadri having been sponsored by the Swatantra Party, was not qualified to be a candidate. Yet another ground taken was that Seshadri was guilty of corrupt practices coming within sub-section (5) of Section 123 of the Act. The High Court set aside the election of Seshadri on the ground that he was guilty of corrupt practices mentioned in sub-section (5) of Section 123. Dealing with the question whether Seshadri was qualified to be a candidate at the election or not it observed that there is no satisfactory evidence before it to come to a conclusion that Seshadri had been sponsored by a political party. But proceeding further it observed:

"It is quite well known that the election to the Madras Legislative Council from the Madras District Graduates' Constituency is a non-party election. No party symbols are assigned to the candidates. The political parties cannot also nominate any candidate for this election."

7. Aggrieved by the decision of the High Court, Seshadri took up the matter in appeal to this Court. This Court affirmed the finding of the High Court that Seshadri was guilty of the corrupt practices mentioned in sub-section (5) of Section 123 of the Act. Evidently this Court was not invited to consider the correctness of the observations of the learned trial judge that "election to the Madras Legislative Council from the Madras District Graduates' Constituency is a non-party election". The judgment of this Court did not touch that point.

8. After the decision in Seshadri's case Vasantha Pai persisted in carrying on propaganda that the Madras High Court had held that the election to the Madras Legislative Council from the Madras District Graduates' Constituency is a non-party election and no political party can sponsor a candidate in that election. He also carried on the propaganda that Narayanaswamy's candidature has been sponsored by the Swatantra Party and therefore according to him, he was not qualified to be a candidate.

9. Having set out these facts we will first consider whether Vasantha Pai was guilty of a corrupt practice coming within sub-section (4) of Section 123. The charge under this head is based on two grounds, viz., that he had falsely carried on propaganda that the High Court had ruled that the constituency in question was a non-political constituency and further that he had carried on a false propaganda that Narayanaswamy was not qualified to be a candidate. The ingredients of the corrupt practice mentioned in Section 123(4) as set out by this Court in *Guruji Shrihar Balirani Jivatode v. Vithalrao and Others*,<sup>1</sup> are—

(1) the publication by a candidate or his election agent or any other

1. (1969) 2 SCR 766: (1969) 1 SCC 82.



person with the consent of the candidate or his election agent of any statement of fact ;

- (2) which statement is false and which was believed by the candidate to be false or at any rate was not believed by him to be true ;
- (3) the said statement relates to the personal character or conduct of a candidate or in relation to his candidature or withdrawal ; and
- (4) the same being a statement reasonably calculated to prejudice the prospects of that candidate's election.

10. Taking up first the propaganda of Vasantha Pai that Narayanaswamy was not qualified to be a candidate, it was only an opinion expressed by Vasantha Pai. He made no statement of fact. An opinion, much less an opinion on a question of law cannot be considered as a statement of fact. Further his opinion cannot be said to be either not bona fide or groundless as the same was accepted as correct by the High Court of Tamil Nadu in the election petition filed against Narayanaswamy though that decision was reversed by this Court in *G. Narayanaswami v. G. Pannerselvam and Others*.<sup>2</sup>

11. The fact that the Returning Officer had held that Narayanaswamy was qualified to be a candidate did not preclude Vasantha Pai from debating that issue before the electorate. Vasantha Pai's propaganda that the High Court has held that the Graduates' constituency is a non-political constituency cannot be said to be false statement. The High Court advertently or inadvertently said so though it was wrong in saying so as we shall presently see. Hence the charge under Section 123(4) fails.

12. Now turning our attention to the allegation of undue influence, we fail to see how a debate whether a candidate was qualified to stand or whether a political party is competent to nominate candidates for a particular constituency can be undue influence within the meaning of Section 123(2). Both candidates have placed their point of view before the electorate. Vasantha Pai sought support from the High Court's Judgment and Narayanaswamy relied on the Press Note issued by the Election Commission that political parties are not precluded from sponsoring candidates in the Graduates' constituencies. Candidates in elections are not only entitled to raise political issues, they can also raise social, economic and legal issues. The fact that a contention is untenable does not convert it into an undue influence. We do seek to limit the scope of the expression "undue influence" in Section 123(2). As observed by this Court in *S. K. Singh v. V. V. Giri*:<sup>3</sup>

"The freedom of election is twofold : (1) freedom in the exercise of judgment. Every voter should be free to exercise his own judgment, in selecting the candidate he believes to be best fitted to represent the constituency ; (2) Freedom to go and have the means of going to the poll to give his vote without fear or intimidation."

13. In that decision this Court observed after taking into consideration Section 171-G of I. P. C. :

"It is clear that in pursuit of purity of elections the Legislature frowned upon attempts to assail such purity by means of false statements relating to the personal character and conduct of a candidate and made

2. Civil Appeal No. 189 of 1971, decided on April 12, 1972 : (1972) 2 SCC xxiii.

3. (1971) 2 SCR 197 : (1970) 2 SCC 567.

such acts punishable thereunder. But the fact that making of such a false statement is a distinct offence under Section 171-G does not and cannot mean that it cannot take the graver form of undue influence punishable under Section 171-F. The false statement may be of such virulent, vulgar or scurrilous character that it would either deter or tend to deter voters from supporting that candidate whom they would have supported in the free exercise of their electoral right but for their being affected or attempted to be affected by the maker or the publisher of such a statement. Therefore it is the degree of gravity of the allegation which will be the determining factor in deciding whether it falls under Section 171-C or Section 171-G. If the allegation though false and relating to a candidate's personal character or conduct, made with the intent to affect the result of an election, does not amount to interference or attempt at such interference, the offence would be the lesser one. If, on the other hand, it amounts to interference or an attempt to interfere, it would be the graver offence under Section 171-F, read with Section 171-C."

14. Herein it may be noted that Vasantha Pai did not make any attack on the character of Narayanaswamy. His contention was that the election to the constituency in question was non-political and that Narayanaswamy was not qualified to be candidate, he being not a graduate. Vasantha Pai was entitled to place these points of view before the electorate and even tell them that if Narayanaswamy is elected he may challenge his election. It was for Narayanaswamy or his supporters to counter the arguments advanced on behalf of Vasantha Pai.

15. For the reasons mentioned above we agree with the High Court that the appellant has failed to establish the charges levelled by him.

16. At the same time we think it necessary to observe that the conclusion of the Madras High Court in R. N. Seshadri's case that the Graduates' constituency is a non-party constituency is an erroneous conclusion. There is no reference to political parties either in our Constitution or in the Act. The political parties come into the picture indirectly though they have an important place in our political set-up. Our Constitution and the Act refer to candidates as such and not to the parties to which they belong. Article 173 of the Constitution prescribes the qualifications of the person to be chosen to fill a seat in the Legislature of a State. They are—

- (1) he must be a citizen of India;
- (2) he must make and subscribe before some person authorised in that behalf by the Election Commission an oath or affirmation according to the form set out for the purpose in the Third Schedule to the Constitution;
- (3) in the case of a seat in the Legislative Assembly he must not be less than 25 years of age and in the case of a Legislative Council he must not be less than 30 years of age; and
- (4) he must possess such other qualifications as may be prescribed in that behalf by or under any law made by Parliament.

17. Then we come to the provisions of the Act. Section 5 of the Act prescribes the qualifications for membership of a Legislative Assembly. In the case of a general constituency, the only qualification prescribed is that he must be an elector for any assembly constituency in that State. Section 6

prescribes the qualifications for membership of a Legislative Council. That Section reads:

“(1) A person shall not be qualified to be chosen to fill a seat in the Legislative Council of a State to be filled by election unless he is an elector for any Assembly constituency in that State.

(2) A person shall not be qualified to be chosen to fill a seat in the Legislative Council of a State to be filled by nomination by the Governor unless he is ordinarily resident in the State.”

18. The Representation of the People Act, 1950 prescribes qualifications for being enrolled as an elector. Sections 8 to 10-A of the Act set out the grounds which disqualify a person from being a candidate. If a person possesses all the qualifications prescribed in the Constitution as well as in the Act and has not incurred any of the disqualifications mentioned therein then he is qualified to be a candidate. It may look anomalous that a non-graduate should be a candidate in a Graduates' constituency. But if a candidate possesses the qualifications prescribed and has not incurred any of the disqualifications mentioned in the Constitution or in the Act other consideration becomes irrelevant. That is the ratio of the decision of this Court in *Narayanaswamy's case* (supra).

19. It was urged on behalf of Vasantha Pai that Article 171(3)(d) of the Constitution specifically says that the members of the Assembly should elect as nearly as may be 1/3rd members of the Legislative Council from amongst persons who are not members of the Assembly. But no such stipulation is made in the other clauses of that Article. Therefore we should conclude that when elections are held under clauses (a), (b) and (c) of sub-article (3) of Article 171, the person to be elected must be one who is a member of the electoral college in question. We see no logic in this reasoning. The relevant provisions do not say so. From the language of those provisions, it is clear that the candidate may either be a member of the electoral college in question or even an outsider. This question is no more res integra. It is concluded by the decision of this Court in *Narayanaswamy's case* (supra).

20. Dealing with the question that the election to the Graduates' constituency is non-political, our attention was invited on behalf of Vasantha Pai to certain rules framed under the Act as well as the forms prescribed. In the form prescribed for nominating candidates for legislative assemblies there is a column requiring the candidate to mention whether he belongs to a political party, if so, which party, whereas there is no such column in the form prescribed for nominating candidates to the Legislative Council. From this we are asked to infer that the election to the Legislative Council is non-political. In our opinion this is an erroneous contention. The electors to the legislative assembly are by and large illiterate. Hence to facilitate the freedom of voting, the symbol system had been introduced. There are two types of symbols, viz., reserved symbols and free symbols. Reserved symbols are allotted only to candidates sponsored by recognised political parties. Free symbols are given to others. In order to allot the reserved symbols, it is necessary for the Election Commission to know whether a particular candidate is the nominee of any political party. Symbol system is unnecessary in the elections to the Legislative Council because the electors therein are by and large educated. They can exercise their franchise without the assistance of the symbols. We can see no legal objection for any political party sponsoring candidates to the seats in the Legislative Councils.

21. One other question remains to be decided. The learned trial judge has imposed penal costs of Rs. 500/- on the appellant; that in addition to the ordinary costs. It was contended before us that the learned judge had no competence to impose penal costs. We do not think it necessary to decide that question. From the facts and circumstances of this case, we do not think that there was any justification to impose penal costs. We accordingly set aside the order imposing penal costs. In other respects this appeal fails and the same is dismissed with costs.

**(1972) 2 Supreme Court Cases 601**

*(From Punjab High Court)*

[BEFORE K. S. HEGDE, P. JAGANMOHAN REDDY AND H. R. KHANNA, JJ.]

HUKAM CHAND ETC. ... Appellants;

*Versus*

UNION OF INDIA AND OTHERS ... Respondents.

And

PRITHVI CHAND (deceased) through LRS. ... Appellant;

*Versus*

UNION OF INDIA AND OTHERS ... Respondents.

Civil Appeals Nos. 177 of 1968†, and 1031, 1094-1095 of 1967†  
decided on August 22, 1972

**Administrative Law—Subordinate legislation—Principle of—Difference between subordinate legislation and statutory laws—Power to make rules retrospective—Rule-making power of Central Government under Section 4 of Displaced Persons (Compensation and Rehabilitation) Act, 1954—Rule of ultra vires.**

**Displaced Persons (Compensation and Rehabilitation) Act, 1954 (44 of 1954)—Section 40 and Rule 49 Expl.—Central Government's rule-making power under—Whether Government can make rules with retrospective effect.**

**Administrative Law—Ultra vires—Whether placing of rules before Parliament confers validity on an ultra vires rule.**

*Held:*

- (i) As it is Section 40 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 which empowers the Central Government to make rules, the rules would have to conform to that section. There is nothing in the language of Section 40 to empower the Central Government either expressly or by necessary implication, to make a rule retroactively, the Central Government would be acting in excess of its power if it gave retrospective effect to any rule. The underlying principle is that unlike Sovereign Legislature which has power to enact laws with retrospective operation, authority vested with the power of making subordinate legislation has to act within the limits of its power and cannot transgress the same. (Para 8)

†Appeal by certificate from the judgment and decree, dated April 21, 1966, of the Punjab High Court at Delhi (Circuit Bench).

†Appeal by Special Leave under Articles 136 and 133 of the Constitution of India from the common judgment, dated September 13, 1966 and April 21, 1966, of the Punjab High Court at Delhi (Circuit Bench) in Letter Patent Appeal No. 60-D of 1965 and Letter Patent Appeals Nos. 59-D of 1962 and 73-D of 1965 respectively.