

2283

IN THE BOMBAY CITY CIVIL COURT AT BOMBAY.

Suit No. of 1974.

1. Dhiraj Meghji Shah of Bombay)
Indian Inhabitant residing)
at 16, Bhoj Terrace, Tejoo)
Kaya Park, Matunga, Bombay-)
-400 019. ..)
2. K. H. Subramaniam also of)
Bombay Indian Inhabitant --)
residing at 9, Janaki Nivas,)
Sion (West), Bombay-400 022.) .. Plaintiffs.

V/s.

1. Mr. Pileo Mody, M. P.)
Mody & Colgan, Stadium House,)
Veer Nariman Road, Churchgate,)
Bombay - 20. ..)
2. Mr. R. N. Singh Deo,)
Kharabelanagar, Bhubaneswar-1,)
Puri District. ..)
3. Rajmata Gayatri Devi, M. P.)
Rajmahal Palace, Maji Ka Bagh,)
Jaipur. ..)
4. Mr. G. Latchanna,)
Seva Sadan, Chintalbasti,)
Hyderabad. ..)
5. Mr. Madhu Mehta,)
84-A, Nepean Sea Road,)
Bombay - 6. ..)
6. Sardar Harbhajan Singh,)
7/113, Swaroop Nagar,)
Kanpur. ..)

7. Dr. M. Mathias,)
Cape Road, Nagercoil,)
District Kanyakumari,)
Tamil Nadu. ..)
8. Mr. K. Sundaram,)
"Rasakondalu",)
Circuit House Road,)
Coimbatore, (Tamil Nadu))
9. Mr. J. Chandramouli,)
14th Line, Arundelpet,)
Guntur - 2.)
10. Mr. M. R. Arya,)
199, West Patel Nagar,)
New Delhi -8.)
11. Dr. M. Santosham,)
66, Egmore High Road,)
Egmore, Madras - 600 008.)
12. Mr. Arif Mohammed Khan,)
Vill. Barwala,)
Post Bharkon,)
District Bulandshahr, (U.P.))
13. Mr. K. N. Jain,)
Advocate,)
Rambhag Palace Quarters,)
Jaipur.)
14. Mr. Tribikram Tripathy,)
At Patnaikpara, --)
P. O. Sambalpur,)
District Sambalpur,)
(Orissa).)
15. Mr. K. C. Panda,)
Rugudipara, Post & Dist.)
Bolangir, Orissa.)
16. Mr. Y. G. Gowd,)
Devi Niwas, Yemmigannur,)
Aurnool District, (A.P.).)

17. Mr. D. N. Patodia,)
N-108, Panchsheel Park,)
New Delhi - 17.)
18. Dr. H. R. Pasricha,)
20-B, Gangaram Hospital)
Road, New Delhi-60.)
19. Mr. H. M. Patel, M. P.)
Charutar Vidyamandal,)
Vallabh Vidyanagar,)
District Kaira, Via Anand)
(Gujarat))
20. Mr. Johnson Vallikkappen,)
Parayil Building,)
Near Railway Station,)
Kottayam, (Kerala))
21. Mr. J. M. Lobo Prabhu,)
Chateau de Lou,)
Mangalore - 575 001,)
(Karnataka).)
22. Mr. R. Y. Ghorpade,)
North Coorg Club,)
Mercara Post,)
(Karnataka).)
23. Mr. Indukumar Thakkar,)
Suswagatham, Central)
Avenue, Chembur,)
Bombay - 71.)
24. Mr. Harihar Patel,)
Advocate,)
312, Kharavelanagar,)
Unit - 3, P.O.Bhubaneswar)
(Orissa.))
25. Mr. Gurucharan Thikayat,)
At Gurukhetra,)
P.O.Cuttack-4, Dist.)
Cuttack, (Orissa).)

26. Mr. Saratchandra Mahapatra,)
Reliance Electricals,)
At Janpath, Unit - 3,)
Bhubaneswar, (Orissa).)
27. Mr. Ramkanwar, M. P.)
Vill. Phadia, Post Chittora)
Renwal Tehsil, Phagi,)
(Rajasthan) . .)
28. Mr. Narpat Singh,)
39, Soganí Colony,)
Lal Kothi, Jaipur.)
29. Mr. Ajmal Khan,)
Advocate,)
Bodinayakkanur,)
Madhurai District,)
(Tamil Nadu).)
30. Mr. H. K. Srivastava,)
11/323, Souterganj,)
Kanpur, (U. P.))
31. Mr. Karunesh Pratap Singh)
Unwal House, Betia Hata,)
Gorakhpur, (U.P.))
32. Mr. Munnu Singh,)
Vill. Pure Gokul Singh,)
P. O. Bhinga,)
District. Bahraich, (U.P.))

The Plaintiffs abovenamed state as follows:-

1. At all material times the Plaintiffs and the Defendants 1 to 32 have been members of the Swatantra Party an unincorporated Political Association of persons which came into existence in 1959.
2. The Defendants 1 to 32 were the duly constituted

members and/or office bearers of National Executive of the Swatantra Party and were acting as such until 29th August, 1974.

3. The Defendants 1 and 33 to are the -- members and/or office bearers of the National Executive of a new Political Party called the Bharatiya Lok Dal which was formed on the 29th August, 1974.

4. The Swatantra Party was formed on 1st August 1959. On the 1st and 2nd August 1959 a preparatory convention of the Swatantra Party was convened and held in Bombay. At the said preparatory convention a statement of principles was adopted as the essential political creed and confession of the Swatantra Party. The Plaintiffs say that the said statement of principles was basic and fundamental in its philosophical content and gave to the Swatantra Party its identity as a Political community. Its -- philosophy and creed were intended to ensure the unity of political and social faith and beliefs which its adherents professed. The essential idea of that creed and political faith appeared in the public acknowledgement of the political views enunciated on the basis of the said principles as the bond of union which bound the members of the Swatantra Party as one political community. A copy of the said Statement of principles is hereto annexed and marked Ex."A".

Ex."A".

5. Pursuant to its formation, the Swatantra Party adopted a constitution which was modified on the 4th April 1973 at Rajaji Nagar at the Party's Madras Convention. Hereto annexed and marked Ex.'B' is a copy of the said Constitution.

Ex."B".

6. The said constitution provides for the following organisational hierarchy with centres on organs of powers from the base to the Apex;

members and/or office bearers of National Executive of the Swatantra Party and were acting as such until 29th August, 1974.

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6. The said constitution provides for the following organisational hierarchy with centres on organs of powers from the base to the Apex:

- (a) A Primary Unit and its committee;
- (b) A District Unit and its District Committee;
- (c) A State or a Regional Council for every State or part thereof recognised by the General Council to be a region for the purpose with an Executive Committee elected by the State or the regional Council;
- (d) A General Council elected by the appropriate State or regional Councils with a National Executive elected by the General Council.

The said Constitution also provides for national conventions and Regional conventions being held at least once in every two years. The said constitution also provides for a suitable machinery for election and an election tribunal and other incidental matters.

7. By clauses 4, 5, 12, 16 and 19 of the said Constitution it is inter-alia provided as follows:

"4.(a) Every person above the age of 18 who subscribes in writing to the principles of the Party, pays the prescribed fee and expresses his readiness to work for the Party will be eligible to be a Member of the Party; provided that he/she is not a member of any other political party. If he/she is a member of any other political party, he/she shall resign his/her membership of that party and the fact must be -- declared in a manner prescribed by the Party.

(b) Work for the Party may be any of the following activities:

- (i) Enrolling new members;
- (ii) Campaigning for the Party;
- (iii) Attending to public grievances on behalf of the Party and securing their redress;

- (iv) Functioning, when called upon, as prospective candidate of the Party to an elective public body;
 - (v) Collection of funds;
 - (vi) Acceptance of executive responsibilities in the Party;
 - (vii) Preparation of literature;
 - (viii) Distribution of literature;
 - (ix) Organisation of study circles and meeting;
 - (x) Helping to run Party Offices;
 - (xi) Any other approved activity.
- (c) The State/Regional Executive Committee shall be competent to frame rules in this behalf;
- (d) Decisions in regard to the enrolment of members shall be taken by the District Unit. Where there are no district units, decisions shall be taken by the State/Regional Executive or any other body designated by it for the purpose; provided that:
- (1) a District Unit may suspend a member of the Party in the district concerned if in the view of the District Unit, such a member's continuance in the Party is not considered to be in the interests of the Party. The District Unit concerned shall then report the suspension to the State/Regional -- Committee. If after due consideration, the State/Regional Committee desires to either confirm the suspension or recommend his/her expulsion, it shall make an -- appropriate recommendation to the National Executive.
- A member aggrieved by such a decision of the District Unit may appeal to the State/Regional Unit and if aggrieved by

the decision of the State/Regional Unit, he/she shall have the right of appeal to the National Executive.

(ii) Any State/Regional Committee may on its own initiative, suspend or recommend to the National Executive the expulsion of any member of the Party in the State/Region concerned if, in the view of the State/Regional Committee such a member's continuance in the Party is not considered to be in the Party's interest. A member aggrieved by such a decision shall have the right to appeal to the National Executive.

(iii) The National Executive may on the recommendation of the State/Regional Unit or on its own initiative suspend or expel any member of the Party whose continuance as member is not considered to be in the interest of the Party."

"5.(a) Every member of the Party shall pay a subscription of Re.1/- per year. A member can pay his/her subscription for as many years as he/she desires. Anyone who pays his/her subscription at a time for a period of twenty years or more shall be deemed to be a member of the Party for life.

(b) A member of the Party will continue as such, as long as he/she pays his/her subscription. Each member of the Party will be issued a Party Card (preferably in his/her regional language). The Cards will be issued by the National Headquarters of the Party. Renewal of membership shall be done in such manner as may be prescribed by the National Executive.

(c) Only members whose membership is current on the date of the election shall have the right to vote in Party elections or to serve as Office

Bearers or as members of elective committees.

(d) The membership subscription shall be divided between the various units in the following manner:-

Primary Unit.	...	40%
District Unit.	...	40%
State/Regional Unit.	...	10%
National Headquarters.	...	10%

(e) Every Unit shall maintain appropriate accounts of the receipts and expenditure which shall be -- available for audit."

"12. (a) The General Council shall elect the National Executive of the Party.

(b) The National Executive shall consist of a President, one or more Vice-Presidents, a General Secretary, one or more Joint Secretaries, one or more Treasurers and not less than 10 and not more than 20 members.

(c) The election of Office Bearers and members of the National Executive shall take place at a meeting of the General Council and, if possible, such -- meeting may be held on the eve of the National Convention.

(d) The National Executive shall be competent and shall have the power:

- (i) to take all such actions and decisions and to do all such things and acts as it may consider necessary or desirable in furtherance of the Party's objective; and
- (ii) to raise funds; collect subscriptions and to borrow moneys for the purpose."

"16. (a) The National Convention of the Party shall be held at least once every two years.

(b) The Convention shall be constituted of delegates elected on the basis of direct election by Members of the Party in such manner as may be prescribed by the National Executive."

(c) The appropriate strength of delegates from each State shall be determined by the National Executive."

"19. Amendments to the Constitution may be made at the National Convention of the Party.

(a) on the recommendation of the General Council by a majority of delegates present and voting at such Convention, or.

(b) on a proposal by 200 Members of the Party by -a three-fourths majority of the delegates present and voting provided 30 days' clear notice thereof had been given to the National Executive."

8. The Plaintiffs say that by reason of the aforesaid provision funds could be raised, subscription collected, borrowings made, acts done and decisions taken only in furtherance of the Swatantra Party's objective and not otherwise. The Plaintiffs say that the Swatantra Party's objective as set out in clause 2 of the said Constitution is as follows:-

"2. The Objective of the Party shall be to further and endeavour to put into effect the principles adopted by the Party's Preparatory Convention in Bombay on August 1 and 2, 1959, and such policies and programmes as the Party may from time to time adopt in furtherance of those principles".

The Plaintiffs submit that defendants 1 to 32 were thus in the position of Trustees and/or in fiduciary relationship/^{vis-a-vis the} assets, properties, funds, etc. which were to be acquired for the Swatantra Party's aforesaid objectives.

9. Pursuant to the formation of the Swatantra Party it set up several autonomous units at the state, district -

city

city and assembly constitutional level. These units while being part of the Swatantra Party were autonomous administratively financially and in their day to day functioning. Each unit, primary, district and state and National Party acquired several assets, funds, office premises moveables and other properties. The Swatantra Party also opened Bank accounts in several Banks.

10. Until December 1959 the National Head quarters of the Swatantra Party were situated in Madras. In or about July 1959 Shri M. R. Masani acquired on tenancy basis for the Swatantra Party, Bombay region (which was an approved Region) office premises at 143, Mahatma Gandhi Road, Bombay-1. In December 1959 Shri Masani, who had been appointed the General Secretary of the Swatantra Party, transferred the said National Head-quarters to Bombay so as to enable him to function -- effectively and upon his request the Swatantra Party, Bombay Region, permitted the said National Head quarters to be accommodated in a portion of the said office -- premises. Until the 29th August 1974 the National Head quarters of the Swatantra Party have continued to operate from the said portion of the office premises which was obtained for the Swatantra Party Bombay region. The Swatantra Party, Maharashtra (another approved Region) also used to function from the said office premises of the Swatantra Party, Bombay Region. In the Bombay -- Region and Maharashtra Region were amalgamated and unified into a single region of Maharashtra with all attendant and consequential charges and effects and the said office premises became the office premises of the Swatantra Party, Maharashtra. The Swatantra Party, Bombay Region and after amalgamation and --

unification as aforesaid the Swatantra Party, Maharashtra have paid regular-ly the rents and electricity charges out of the funds of the said Bombay and Maharashtra Swatantra Party. The Plaintiffs crave leave to rely upon the counterfoils ^{of} several cheques and the Receipts when produced.

11. On or about the 6th and 7th April 1974 the -- National Executive of the Swatantra Party passed several resolutions on (1) The State of the Nation (2) The programme of action, (3) On Economic Recovery (4) On Gujarat and Bihar affairs and (5) On Impending Railway Strike. The Resolution of "Programme for action" set out programmes which the Swatantra Party intended to take up. By programme (a) to (c) it was provided as follows:-

(a) To do so, the Party must build its cadres in every village and city of India through programmes to motivate the people and particularly the youth into the nation building -- activities and constructives thought based on the sound and integrated principles, policies and programmes of the Swatantra Party.

(b) At the same time the Party must continue to educate the Government and other authorities into accepting pragmatic postures, discarding dogma, and into mobilising the necessary -- energy and wisdom to administer efficiently and to root out corruption.

(c) The Party will continue to explore all possibilities to bring about a two-party system in India with a view to remove the chaos prevailing in our political life and the confusion created in the minds of the -- electorate. In this connection the Swatanta

Party urges all political parties and politicians to co-operate in this endeavour and to work for the common good.

The Plaintiffs say that the combined effect of the said resolutions and the programmes was that while the National Executive endorsed the efforts of the Swatantra Party to explore the possibility of a two party system it did not authorise the Swatantra Party to give a go-by to the fundamental principles accepted by the Swatantra Party as aforesaid but at best only to seek areas of co-operation with other parties in the near future if other parties did not accept the said principles of the Swatantra Party.

Ex. 'C'. Hereto annexed and marked Ex. 'C' is a copy of the Minutes of the National Executive held in New Delhi on the 6th and 7th April 1974.

12. A meeting of the General Council of the Swatantra Party was thereafter held in New Delhi on the 9th and 10th June 1974. The following agenda was notified by the 2nd Defendant, one of the Vice-Presidents of the Swatantra Party.

- (1) To consider the Draft policies and programme of the proposed new party;
- (2) To decide whether the General Council should recommend or not the National Convention of the Swatantra Party, the dissolution of the Swatantra Party for the purpose of bringing about a new Party with an acceptable common programme.
- (3) Any other matter with the permission of the Chair. The Plaintiffs will rely upon the said notice of the meeting notifying agenda when produced.

13. On or about 9th June 1974 a cyclostyled draft statement of policy was presented to the members of the General Council then assembled. After a debate which lasted until the evening of the 10th June 1974 the General

Council passed a resolution stating that while the General Council welcomed attempts made by various parties to come together with a view to provide a National alternative it felt that in so far as the Swatantra Party was concerned the final decision could be taken only at a National Convention. The General Council decided that a copy of the Draft Programme should be circulated to all the members of the State Council. Hereto annexed and totally marked Ex.'D' is Ex.'D'. a copy of the said resolution together with the minutes of the said meeting issued by the National Head -- quarters.

14. A printed draft statement of Policy entitled "The National alternative, India's only hope" a New Party publication, was thereafter made available to the members of the State Council of the Swatantra Party, Maharashtra as envisaged in the said Resolution Ex.'D' hereto.

15. In the said printed draft statement of Policy presented for consideration of the members of the State Council it was stated as follows:-

"The only way to arrest this deteriorating situation and to avert the dangers of a -- totalitarian take over is to create a strong National Alternative and also to act as a national corrective to the Ruling Party. Therefore, the National Alternative must present to the people a distinct and definite alternative programme of action to meet the challenge and stem the rot."

"Political parties that follow different paths, or no path at all, inscribe on their banner abstract principles and cliches like democracy, socialism, progressivism, Garibi Hatao. etc..

without meaning anything. The Congress Party has been clever enough to beg, borrow and steal these expressions and pretend to translate them to represent the new urges of the radicals. In their hands these radical principles and programmes of socialism, equality, progress and change have lost all meaning and content - in fact, they have been soiled with blood and dirt." "The new party, must, therefore, concretise these principles and present guidelines for action: How to end inequalities in status, reduce inequalities in income to the maximum extent, banish poverty and unemployment, stabilise prices, eliminate corruption, improve morals, encourage growth and build hope and aspiration".

Thereafter the said draft statement enunciated four -- principles of democracy, nationalism, socialism, better expressed afforism Sarva Dharma Samabhava and social justice which implied the welfare of the people ^{based} / ~~leased~~ on equality and prosperity, enunciated and described as the fundamental principles and the "four pillars" of the proposed New Party. The said "Four Pillars" were then explained in elaboration. The said printed draft statement of Policy then set out certain policies and programme. Hereto annexed and marked Ex."E" is a copy of the said draft statement of policy.

Ex.'E'.

16. The Plaintiffs say that the draft statement of policy does not reveal or manifest any particular ideology upon which alone a new party can be founded or can subsist. The document reveals merely a set of programmes variable from time to time upon the basis of minimum consensus available from time to time from and between those who join the new party. The Swatantra Party on the other

hand represents a positive politico-economic philosophy and ideology well recognised in democratic countries governed by Parliamentary system.

17. By a circular letter dated the 16th June 1974 issued from the office of the 1st Defendant as the then President of the Swatantra Party the members of the State Councils were exhorted to evolve a two party system in the country. The said letter went on to say as follows:-

"In such a situation the only worth while political activity remains to create a powerful, viable and credible national alternative bringing all non-Congress, non-Marxist, non-Communist parties together. This include all national and state parties, communal parties, regional parties, fractional parties, personal parties, independents, new people with new hope, and whatever else may exist."

"Therefore the only solution seems to us to be a TWO-PARTY system. The two party system has a chance of succeeding where other efforts have failed for the simple reason that it -- breaks down old inhibitions and steers clear of ideological conflict. It also has a greater chance of survival as all alternatives are neatly obliterated leaving only two parties in the field".

"The reason why the Swatantra Party has decided to pursue this two-party idea is to remove a vast number of inhibitions, political and personal, prevailing in our political parties in joining hands with each other."

"The dichotomy of Indian politics is largely historical. We have inherited a coalition party in the form of the Congress which is based on the Anglo-American example and confronting it is a plethora of ideological or regional based parties on the Continental pattern. At no time is any opposition party attacking the entire political parliamentary system".

The two party system would therefore create a broad spectrum which will not only confront the Congress but present an alternative to the people".

The two party idea is not based on merger, which tends to carry the old odiums attached to the existing parties into the new one, forcing the new party into compromises and bargaining amongst its constituent units.

It implies a dissolution of all parties and the creation of a new party which would evolve a programme from time to time on the basis of consensus. Naturally within the party, all of us should and must fight to gain the predominance of our principles and policies. That is why, to keep Swatantra philosophy alive and enhancing its propaganda, the Swatantra members must remain together and join the new Party en-mass to flood it with our ideas".

"The advantages of a "two-party" system are too numerous to list in a letter of this length. Its most obvious advantages being that both parties, that is the ruling party and the opposition party, are not ideolo-

ideologically based but are programme based permitting a large degree of regional deviation and a broad spectrum of individual opinion keeping with our 21st principle".

"A draft programme, a draft constitution and a tentative name has to be agreed upon. You need have no apprehension with such a programme, a draft which is enclosed. As you will see, it largely incorporates Swatantra thinking and that we may have to compromise on a very few matters like agreeing to start trade unions and student organisations to pacify our partners. But then you know that even in our own party, opinions have been strongly divided on these matters. Further the new party will have a strong emphasis on decentralisation and would consequently have to frame its constitution permitting the state parties some measures of regional deviation and the expression of individual opinion. Again, our 21st Principle will also largely pacify those who believe in a federal party".

The Plaintiff say that the said letter dated the 16th June 1974 makes it amply clear that the new party was sought to be formed was not ideologically based but purely programme-based.

Hereto annexed and marked exhibit 'F' is a copy of the said circular letter.

Ex. 'F'.

18. The 2nd Defendant as the Vice President of the Swatantra Party, by his letter No.317 dated 1st July 1974 informed Swatantra Party, Maharashtra that the National Convention of the Swatantra Party would be held on August 4th, 5th in New Delhi at the -- Sapru House. By the said circular letter the 2nd defendant informed the Swatantra Party, Maharashtra

State. The quota of the delegates was fixed on the enrollment figures in the respective state as on the 30th September 1973 and that considering the resources position of the Party and the fact that the Convention will have to be held within the premises of a Hall and not an open ground or shamiana, the ratio of delegates had been fixed by the National Executive at 1 delegate for every 100 worker/life worker of the Party. By the said circular letter the 2nd Defendant further informed the Swatantra Party, Maharashtra that their membership as on 30th September 1973 stood at 2063 and the Swatantra Party, Maharashtra were therefore entitled to a quota of 21 delegates. By the said circular letter the National Executive, through the 2nd Defendant, directed the State parts to select their delegates only. Hereto annexed and marked Ex. 'G' is a copy of the said circular letter of the 1st July, 1974.

Ex. 'G'.

19. A meeting of the members of the State Council, Maharashtra, was held on the 6th July 1974. After discussion the meeting of the State Council Maharashtra felt convinced that the new party would make no advance on the ~~xxx~~ search for a truly national alternative comprising as it did those who, though for the present, had consented to get together in a general programme were bound to disagree in regard to the interpretation of a vague and general statement of policy. The said State Council resolved that it did not consider the time or occasion opportune for the disappearance of the Swatantra Party from the Indian Political Scene and was opposed to the proposal to dissolve the said party and requested the office bearers of the Party to convene another meeting of the General Council on the eve of the National Convention to enable the matter of the dissolution of the Swatantra Party and its merger into a new party to be -- reviewed once again before the same was brought up at the National Council. The said meeting further resolved that in the event of the resolution to dissolve the party was

carried in the National Convention, the Maharashtra Swatantra Party and would carry the message and flag of the party. The Swatantra Party, Maharashtra selected and did not elect 16 delegates at the said meeting and left the other selection of the rest of the 21 -- delegates to a committee consisting of Shri Kejriwal, Shri Girish Munshi, Senior Vice President, General Secretary respecting of S. P. Mehta, Shri K. K. Subramaniam. The Plaintiffs say that this was in accordance with the direction of the National Executive as granted in the said letter of the 2nd Defendant. The Plaintiffs crave leave to rely upon the minutes of the proceedings at the meeting held on the 6th July 1974.

20. A copy of the said resolution was sent to the National Head quarters. No meeting of the General Council was however convened and held as directed by the said Resolution. Hereto annexed and marked Ex. 'H' Ex. 'H' is a copy of the resolution adopted by the State -- Council of the Swatantra Party Maharashtra.

21. The Plaintiffs say that ^{at} all the earlier National Executive before the said National convention held on the 4th and every the 5th August 1974 at New Delhi 1 delegate was allowed to represent 10 worker/life worker. An upper ceiling of 200 delegates from any one single state was imposed so as not to give prepondance to any one state a region at the expense of the other states or region. By his letter dated the 6th July 1974 the 1st defendant as the President of the Swatantra Party explained the reasons which led to relaxation of the rule whereby 1 delegate was to represent 100 and not 10 worker/life worker and but did not even hint that the upper limit of 200 delegates from any ground state would be -- relaxed. The Plaintiffs say that the said relaxation was to give prepondance to the delegates from U.P.

and was malafide and ulterior motives.

22. At the National Convention held in New Delhi on 4th and 5th August, 1974, 484 delegates attended from all the parts of the country. Delegates from U.P. numbered 209. The Plaintiffs say that the said delegates were not elected on the basis of direct election by the members of Swatantra Party but were persons merely selected in accordance with the said letter dated 1st July 1974 of the 2nd Defendant as the Vice President of the Swatantra Party.

23. Out of the said 484 persons, 407 voted in favour of the official resolution moved by Singh Deo and Seconded by Dr. M. Santoshm and 53 members representing a large number of basic members opposed the said resolution. By the said Resolution the Seventh National Convention resolved that:-

" That this National Convention of the Swatantra Party welcome the idea of forming a National Alternative by the amalgamation of all political forces and approved the impending formation of the New Party, namely, Bharatiya Lok Dal (The Peoples Party of India) And notes with gratification the fact that it has evolved a common programme, acceptable to the Swatantra Party".

" Resolved that the final declaration will be announced by the President Mr. Piloo Mody, after the National Executive ~~in~~ has reviewed developments if any that the Swatantra Party will cease to exist and will merge itself with the new Party. The Bharatiya Lok Dal (The Peoples Party of India), or whatever name the New Party may give itself, as and when it comes into being, to further the objectives of the Swatantra Party.

Such of the existing members who do not wish to join the New Party, would be free to carry on such non-partisan activities, which eschew all elections as they may choose, in any name other than the "Swatantra".

"Resolves Further that the President of the Party Mr. Piloo Mody is authorised to intimate to the Chief Election commissioner about the dissolution of the Party from the date as mentioned above and request the Chief Election Commissioner to freeze the symbol of the Party to avoid it unfair exploitation".

"Resolves Further that the National convention authorises the President of the Party, Mr. Piloo Mody, to take all necessary steps and decisions to implement the aforesaid resolution."

The Plaintiffs say that another resolution opposing the dissolution of the Swatantra Party was moved at the said convention as follows:-

"The Seventh National convention of the Swatantra Party has carefully considered the proposal placed before it that the Swatantra Party be dissolved along with the similar dissolution of six other parties so as to facilitate the formation of a new Party. The Convention notes that of the seven parties that are expected to dissolve to enable the formation of the new Party, the Swatantra Party is the only National Party, the others being -- confined to particular States or parts of State. The convention is firmly convinced that the Party's principles and policies continue to be valid and had the policies ~~been~~ of the Government been formulated on the basis of the said

principles, our country would not be in the present critical situation. The convention is firmly convinced that the new Party will mark no advance in the search for a truly national alternative comprising as it does those who, though for the present have consented to get together on a general programme are bound to disagree in regard to the interpretation of a vague and general statement of policy.

Moreover, with the opposition parties like Congress (O) and the Jan Sangh continuing their individual existence, the objective of a two party system and its electoral benefits will continue to elude us. On the other hand, there is real danger of the ruling Congress on the one side and the Jan Sangh on the other being the direct beneficiaries of such a development. The National Convention of the Swatantra Party does not consider the time or occasion opportune for the disappearance of the Swatantra Party from the Indian political scene and therefore rejects the proposal to dissolve the Party".

The said Resolution was however defeated. The Plaintiffs will crave leave to refer to the proceedings of the said convention when produced.

24. Thereafter on or about 28th August 1974, the National Executive of the Swatantra Party adopted two resolutions as set out hereinafter:-

RESOLUTION 1.

As all the parties forming the Bharatiya Lok Dal have completed their formalities and agreed that the Bharatiya Lok Dal, (Peoples' Party of India) shall be inaugurated on the 29th August 1974, in pursuance of the resolution of the 7th National Convention. This meeting of the National Executive, Swatantra Party:-

RESOLVES, that the President, Mr. Piloo Mody, is hereby authorised to declare the merger of the Swatantra Party with the Bharatiya Lok Dal, the Peoples' Party of India, at the inaugural function of the Bharatiya Lok Dal on August 19, 1974.

RESOLVES, further that on such announcement the rights, assets and liabilities of the Swatantra Party, where ever they may exist, shall be and become the rights, assets and liabilities of the Bharatiya Lok Dal.

RESOLUTION 2.

The National Executive of the Swatantra Party was informed that a small number of members of the Party are, in contravention of the decision taken at the Seventh National Convention of the Swatantra Party, contemplating to function under the name of the Swatantra Party.

The National Executive therefore affirms that there is and always has been only one Swatantra Party, and that Party has decided at its National Convention August 5th to merge in the Bharatiya Lok Dal and that on such merger no person or group of individuals shall have any right to claim to be the Swatantra Party or to lay claim to any of its rights whatsoever.

The Plaintiffs will crave leave to refer to the proceedings of the said meeting of the National Executive when produced.

25. On or about 29th August, 1974, the 1st Defendant illegally purported to declare the merger of the Swatantra Party into the Bharatiya Lok Dal.

26. The Plaintiffs say and submits that the said resolutions passed at the National Convention of the

Swatantra Party on 5th August 1974 are invalid, illegal, null and void, inoperative and of no effect whatsoever and are not binding upon the Swatantra Party and the members thereof or its branches and/or units at any level of hierarchy and the Swatantra Party, its branches ~~exists~~ unites as all over continue to exist and function on before for the following amongst other reasons, each being without prejudice to the others:

- (a) There is no provision for dissolution and/or merger of the Swatantra Party in its Constitution and in the absence of such a provision it was and is not competent for the National Convention or any other organ of the Swatantra Party to dissolve it or merge it with any other party;
- (b) Clause 16 of the Constitution provides that the delegates to the National Convention must be directly elected by members of the party and not by mere selection as directed by letter dated 1st July 1974 of the 5th Defendant as the Vice President of the Swatantra Party being exhibit ' ' hereto. In fact no direct election of the delegates took place. In the absence of such direct election by the members of the Swatantra Party, the said National Convention was not a validly constituted body and was not authorised to take any decision on any topic affecting the Swatantra party;
- (c) The said resolution relating to the dissolution of the Swatantra Party was not merely an -- amendment of the Constitution and could not be effected except by an unanimous decision of the National Council. In the absence of such unanimity, the said resolutions are invalid, illegal and ineffective in law;

(d) That if the said Resolutions tantamount to an amendment of the said Constitution which the Plaintiffs deny, the said amendment could only have been made on the recommendation of the General Council. The Plaintiffs say that the General Council had at its meeting held on 9th and 10th June 1974 had made no recommendation for the dissolution of the Swatantra Party but had clearly left the decision of the said proposal to be taken at the National Convention without recommendation;

(e) Alternatively the Plaintiff say that if the said resolution constituted an amendment of the said Constitution such an amendment could only have been made on a proposal of 200-members of the party provided 30 clear days notice thereof had been given to the National Executive. The Plaintiffs say that 200 members had not made any such proposal for the dissolution of the Swatantra Party nor any such 30 clear days notice was given to the National Executive.

27. The Plaintiffs further say and submit that the purported declaration of merger made by the 1st Defendant on 29th August 1974 follows an illegal and invalid -- resolutions dated 5th August 1974 as aforesaid and is in itself illegal, invalid, inoperative and null and void and is of no effect and are not binding upon the members of the Swatantra Party and its branches, units at any level. The Plaintiffs also submit that they are entitled to a declaration that Defendants Nos. 1 to 32 and/or any of them are not entitled to transfer and/or hand over properties, assets and funds of the Swatantra Party, its units and branches at any level to the said Bharatiya Lok Dal and any such purported transfer or handing over is invalid illegal, inoperative,

null and void and of no effect whatsoever and not binding upon the members of the Swatantra Party or of its branch and units.

28. The Plaintiffs further say that none of the rights, assets, funds and properties of the Swatantra Party has been lawfully transferred by or lawfully vested in the Bharatiya Lok Dal by reason of the said alleged invalid Resolutions or otherwise and the said Bharatiya Lok Dal has no right title or interest to and in the said assets, properties and funds of the Swatantra Party or of its units or branches at any levels. In the circumstances the Plaintiffs say and submit and pray the said Resolutions dated 5th August 1974 purported to be passed at the -- National Convention are invalid, illegal, null and void inoperative and of no effect whatsoever and are not binding upon the Swatantra Party or the members thereof or its branches and units at any level of hierarchy and that the Swatantra Party its units and branches at all levels continue to exist and function and has not merged with the Bharatiya Lok Dal.

29. In the event of the Hon'ble Court holding that the National Convention of the Swatantra Party was duly and validly constituted and held and that it had the power to resolve upon the dissolution of the Swatantra Party and its merger with another party, the Plaintiffs will say and submit that the Defendants 1 to 32 as the members of the National Executive whether to hold the assets, properties and funds of the Swatantra Party in trust for the -- furtherance of the principles adopted by the Swatantra Party at the preparatory convention held on the 1st and 2nd August 1959 and could not divert them in furtherance of any other principles and ideology such as is set up by the Bharatiya Lok Dal or their sponsors in the draft statement of policy. The Plaintiff say that Defendants

1 to 32 are bounded liable to hold the said assets as trustees only for the Swatantra Party and cannot claim that in view of announcement of merger made by the 1st Defendant the said rights assets and properties shall be or become rights assets and properties ~~xxx~~ of the Bharatiya Lok Dal. The Plaintiff submits that the said resolutions passed on 28th August 1974 constitute a breach of trust and Defendants Nos. 1 to 32 are liable for the loss caused to the Swatantra Party by the said rights, assets and properties been taken away by Defendants Nos. 1 to 32 as the National Executive of the Bharatiya Lok Dal. The Plaintiffs will claim declaration to that effect.

30. The Plaintiffs say that the Defendants are likely to take steps in pursuance of the said invalid resolutions and to seize and take charge of the rights, assets, properties, funds and other assets belonging to the Swatantra Party its units and branches.

31. The Plaintiffs say that defendants 1 to 32 are likely to transfer and/or hand to the Bharatiya Lok Dal in possession of the said invalid resolutions and the defendants 1 and 33 to as office bearers of the Bharatiya Lok Dal are likely to take charge of the rights, assets, properties, funds and other articles and things belonging to the Swatantra Party its units and branches.

In the circumstances this Hon'ble may be pleased to grant injunction restraining the defendants from taking charge of the rights, assets, properties funds and other articles and things belonging to Swatantra Party.

32. That for purpose aforesaid writing may be made accounts taken and directions from as are necessary.

33. The Plaintiffs say that the Defendants 1 to 32 as representing the Swatantra Party are likely wrongfully to transfer and/or hand over and the Defendants 1 and 33 to as representing the Bharatiya Lok Dal are likely to wrongfully obtain the Transfer a possession of the rights, properties, assets, funds, articles, and things belonging to the Swatantra Party its units and branches. The Plaintiff says that defendants 1 to 32 are trustees of the said rights, properties, assets, funds, articles and things for the Swatantra Party and its members including the Plaintiffs and/or stand in fiduciary relationship was on the same. The Plaintiff further say that there does not exist any standard for ascertaining the active damage caused, or likely to be caused by the conversion of the rights of the members of the Swatantra Party including the defendant which the defendants have invading and threatening to invade. The Plaintiffs further say that conversion is such that precuring compensation would not afford adequate reliefs with Swatantra Party, its members and branches and units and it is also probable that precuring compensation may not be available for the conversion. The Plaintiff further say that injunction is necessary to prevent a multifarious of proceedings. In the aforesaid circumstances the defendants may be restrained by a perpetual injunction of this Hon'ble Court from , in any way acting upon the said resolutions dated the 5th August 1974 and 28th August 1974 and/or from parting or carry to part with and/or utilising or carry to utilise the said rights, assets properties, funds, articles and things or the Swatantra Party for the Bharatiya Lok Dal except for the purposes and objects of the Swatantra

The Plaintiff will pray for interim and ad-interim reliefs in view of the submission above.

34. The Plaintiffs say that there are numerous persons having the same interest in this suit ~~with~~ both on the side of the Plaintiffs and of the defendants and the suit is filed on behalf of and for the benefit of such persons to include with leave granted under Order 1 Rule 8 of the Code of Civil Procedure Code 1908 this Hon'ble Court is entitled to entertain ~~it~~ and try this suit.

35. The Plaintiffs further say that the right to relief in respect of and arising not of the acts and Transactions in this suit exists against the defendants 1 to 32 as members of the National Executive of the Swatantra Party and against 1 - 33 to as the National Executive of the Bharatiya Lok Dal and if separate suits were brought against them common question of Law and facts would arise. The Plaintiffs, therefore, has prayed all together in this suit.

36. The Plaintiffs value the subject matter of the suit for purpose of jurisdiction and court fees at Rs. _____.

37. The Plaintiff will rely upon documents a list whereof is hereto annexed.