

GHASI RAM

v.

DAL SINGH & OTHERS

February 7, 1968

[M. HIDAYATULLAH AND K. S. HEGDE, JJ.]

Representation of the People Act, 1951, s. 123(1), (2) & (7)—Elected candidate being Minister before election using discretionary funds to remove public grievances—If corrupt practice.—Spending funds for general public-good only just before election—Evil practice.

The first respondent was elected to the Haryana State Legislative Assembly at the election held on February 19, 1967. The appellant challenged his election by an election petition on the grounds, *inter alia*, that prior to his election, the respondent, who was a Minister in the State Government and had available to him certain discretionary funds, had used these funds to bribe the voters; it was alleged that prior to the election he had visited several villages in his constituency and the voters had told him that they would not vote for him as he had done nothing for their uplift: he had therefore made various discretionary grants to Gram Panchayats, given funds for the construction of a sacred tank in one village, for building public utility works, community centres and for repairs of Harijan well in different villages. It was also alleged that he had used his position as Minister to favour some of the villagers by providing certain irrigation facilities in some villages with a view to securing support for his candidature. The High Court dismissed the election petition.

On appeal to this Court.

HELD: On the evidence before it, the High Court had rightly dismissed the petition.

The law requires that a corrupt practice involving bribery must be fully established. The evidence must show clearly that the promise or gift directly or indirectly was made to an elector to vote or refrain from voting at an election. The position of a Minister is difficult. It is obvious that he cannot cease to function when his election is due. He must of necessity attend to the grievances, otherwise he must fail. He must improve the image of his administration before the public. If every one of his official acts done *bona fide* is to be construed against him and an ulterior motive is spelled out of them, the administration must necessarily come to a stand-still. [109 F-G]

In the present case the money was not distributed among the voters directly but was given to Panchayats and the public at large. It was to be used for the good of those for and those against the candidate. No doubt this had the effect of pushing forward the respondent's claims but that was inevitable even if no money was spent but good administration changed the people's condition. It could not therefore be held that there was any corrupt practice. If there was good evidence that the Minister bargained directly or indirectly for votes, the result might have been different, but there was no such evidence. [110 B-C]

Case law referred to.

Obiter Election is something which must be conducted fairly. To arrange to spend money on the eve of elections in different constituencies,

A although for general public good is, when all is said, and done, an evil practice, even if it may not be corrupt practice. The dividing line between an evil practice and a corrupt practice is a very thin one. It should be understood that energy to do public good should be used not on the eve of elections but much earlier and that even slight evidence might change this evil practice into corrupt practice. Payments from discretionary grants on the eve of elections should be avoided. [110 D-E]

B CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1632 of 1967.

Appeal under s. 116-A of the Representation of the Peoples Act, 1951 from the judgment and order dated September 12, 1967 of the Punjab and Haryana High Court in Election Petition No. 24 of 1967.

C *Naunit Lal and B. P. Singh*, for the appellant.

G. N. Dikshit and R. N. Dikshit, for respondent No. 1.

The Judgment of the Court was delivered by

D **Hidayatullah, J.** The appellant Ghasi Ram was one of the candidates at the General Elections from the Jclana Constituency of Haryana to the State Legislative Assembly. The respondents were other candidates. The election took place on February 19, 1967 and the results were declared two days later. The first respondent was declared elected having secured 9,000 and odd more votes than the appellant. The present appeal has been filed E by the appellant against the judgment of the High Court of Punjab and Haryana at Chandigarh, September 12, 1967, by which the election petition was ordered to be dismissed. The petition was based on certain corrupt practices of the answering respondent who F was a Minister for Irrigation & Power in the Ministry of Shri Bhagwat Dayal Sharma till the result of the election. He was charged with having used his position as Minister in various ways to further his own election. The High Court on an examination of the evidence came to the conclusion that no corrupt practice was, in fact, proved against him and the election could not be said to be void. Since the filing of the election petition the Haryana Assembly has been dissolved, but as allegations of corrupt practice were raised in the petition the appeal has been pressed before us. G After hearing learned counsel in the appeal we have reached the same conclusion as the High Court and we find the appeal to be unsubstantial. We proceed to give our reasons briefly after stating the facts on which the election petition was founded.

H The corrupt practices charged against the answering respondent can be divided under three heads. The first is that he used certain discretionary funds to bribe the voters. The second is that he used his position to favour some of the villages with a view to securing support for his candidature, and the last is that he exer-

cised undue pressure upon two Patwaris to work for him; when they declined, he ordered their suspension. We shall deal with these allegations in the same order.

A

After the new State of Haryana was constituted on November 1, 1966, the Government of Haryana placed at the disposal of the Cabinet Ministers, Ministers of State and the Deputy Ministers certain sums of money for distribution at their discretion. This was by a Resolution of the Government in November, 1966 (Ex. RW 14/1). This position is admitted. Since the answering respondent was a Minister, a sum of Rs. 50,000 was placed in his discretionary grant. From this sum the answering respondent made his discretionary grants and a sum of Rs. 12,500 in the aggregate was paid by him for various purposes in his constituency. The allegation is that he made this distribution as a bargain for votes in several villages and this amounted to corrupt practice. The amount was distributed by him between December 8, 1966 and January 9, 1967. In most cases the money was paid after the poll but as promises were apparently made this makes no difference to the allegation of corrupt practice. Section 123 lays down what are to be regarded as corrupt practices and it *inter alia* provides :

B

C

D

“123. Corrupt practices.—The following shall be deemed to be corrupt practices for the purposes of this Act :—

(1) Bribery, that is to say,—

E

(A) any gift, offer or promise by a candidate of any gratification, to any person whomsoever, with the object, directly or indirectly of inducing—

(a)

F

(b) an elector to vote or refrain from voting at an election

(2) Undue influence, that is to say, any direct or indirect interference or attempt to interfere on the part of the candidate with the free exercise of any electoral right

G

.
.

(7) The obtaining or procuring or abetting or tempting to obtain or procure by a candidate any assistance (other than the giving vote) for the furtherance of the prospects of that candidate's election,

H

A from any person in the service of the Government and belonging to any of the following classes, namely :—

.

B (f) revenue officers other than village revenue officers known as lamardars, malguzars, patels, desh-mukhs or by any other name, whose duty is to collect land revenue and who are remunerated by a share of, or commission on, the amount of land revenue collected by them but who do not discharge any police functions; and

C

D A promise of a gift or offer is equally a corrupt practice but the gift, offer or promise must be made to an elector to vote or refrain from voting at an election; and, similarly, undue influence and obtaining or procuring of the service of any person in the service of the Government must be with the same intention. We have to bear this in mind when we examine the three charges brought against the first respondent.

E Under the first head of charges it is stated that he promised a payment of Rs. 20,000 to the Grampanchayat, Igra; Rs. 5,000 on February 13, 1967 for a sacred tank in village Ram Rai; Rs. 1,000 on January 9, 1967 to the Grampanchayat, Bahmanwas; Rs. 2,500 in December, 1966 to the Grampanchayat, Bibipur and Rs. 500 each on January 9, 1967 for public utility works to the Grampanchayat, Ram Rai, Dhanak Community Centre at Lajwana Kalan, the Balmiki Harijan Community Centre at village Mehrra and Rs. 500 for the repair of a Harijan well at Lajwana Khurd.

F It is said that before these grants were made the Minister visited these several villages and the voters told him that they were not going to vote for him as he had done nothing for their uplift and on his promising the said sums the voters were won over with the result that the answering respondent secured the bulk of the votes from these villages. The High Court carefully considered the evidence led to prove these allegations and came to the conclusion that it fell short of the requirements of s. 123 of the Act. It is contended before us that the High Court was in error in reaching this conclusion both in fact and law. We shall first dispose of the facts before proceeding to examine what we consider to be corrupt practice in this context.

H The donation to the Grampanchayat, Igra is attempted to be proved through the evidence of one Mehtab Singh (P.W. 10). He stated that the answering respondent, as Chairman of Block Samiti had promised Rs. 5,000 but had not paid it. When he came

for canvassing, the voters were unwilling to vote for him because he had not kept his promise. He then persuaded them and promised to pay some money if they gave him their support. The High Court pointed out that this witness was a discharged Sub-Inspector and the polling agent of the election petitioner. He was found to be telling lies when he said that the amount was received 7 days after the promise, because the record clearly showed that this money was paid only in March, 1967, more than a month after the poll. Lakhi Ram (P.W. 5) admitted that there was a village school which was lying incomplete and money was needed for its completion. It will be noticed that this money was not paid directly to any voter or voters. It was handed over to the Grampanchayat for utilization. This meant that it would have gone to the benefit of those who were going to support the answering respondent and also those who were opposed to him. The High Court did not believe the evidence that there was any bargain for votes as required by the definition of corrupt practice. On a reading of the evidence we are satisfied that the village community asked him for help and the answering respondent promised to help them to complete works of public utility. The amount was paid after the election was over.

Similarly, the sum of Rs. 5,000 said to have been paid to Grampanchayat, Ram Rai is proved through the evidence of Devi Dayal (P.W. 11) and Mangal Singh (P.W. 12). This money was sanctioned on December 8, 1966 even before the Congress had given ticket to the answering respondent. The evidence here also does not show that there was any bargain for votes. The two witnesses were proved to be hostile to the answering respondent. Devi Dayal was his rival candidate in 1952 and had made several applications against the answering respondent. The application for the Congress ticket was made by the answering respondent on December 6, 1966 and the grant being made on December 8, 1966 the evidence of Devi Dayal that the grant was after the nomination was definitely false. Mangal Singh is the editor of a weekly journal, which published several complaints against the answering respondent. The answering respondent stated that he had collected Rs. 25,000 for the sacred tank even before he became Minister; that through his efforts a pucca road, a dispensary, a veterinary hospital, a post office and water works were established. He had also got a primary school upgraded. Ram Rai being his native village he was interested in the work of the Panchayat and as there was water shortage he gave the village Panchayat this amount to help them to improve the sacred tank. The High Court did not find any evidence which would bring the matter within s. 123. It declined to believe these hostile witnesses and on a consideration of the evidence we are not satisfied that the conclusion was erroneous.

A The sum of Rs. 1,000 was paid to the Grampanchayat, Bahmanwas for a primary school. This was a month or a month and quarter before the election. This was sought to be proved through Ram Dutt (P.W. 20). It is in evidence that Ram Dutt was very friendly with the election petitioner and even gave his truck for the use of the petitioner. Evidence further shows that the school building was without a roof for some time and the children used to sit under trees. We are satisfied that this amount cannot be described as a bribe.

B There was no evidence to prove the payment of Rs. 2,500 to Bibipur and as none was brought to our notice this point was rightly decided against the election petitioner.

C The four sums of Rs. 500 each were paid for improvement of Community Centres. The attempt to prove that they were a part of a bargain was discountenanced by the High Court. In respect of the amount paid to Lajwana Kalan the evidence was that of Ram Singh (P.W. 13), the polling agent of the election petitioner, Shri Phula (P.W. 14), whose demeanour was commented upon by the learned Judge, and one of the candidates Mangeram (P.W. 19) and Jailal (P.W. 21), a helper of one other candidate. Their evidence was found to be unsatisfactory either because of the interest in themselves or in other candidates or because of internal discrepancies and defects. We have read the evidence and we see no reason to differ. In support of the other two payments of Rs. 500 each, the only objection raised before us was that the payments were made to the Dhanak and the Balmiki Communities with a view to obtaining their votes because, it was contended, that there was no community centre at these villages. Evidence, however shows that there are *Paras* at these villages, where the Harijan Community meets. In fact, in the petition and the evidence these are referred to as Community Centres. This action of the answering respondent was not found to amount to a corrupt practice and on a consideration of the evidence we are in agreement with the High Court.

D The next group of corrupt practices are said to involve certain facilities provided in the matter of irrigation. For example, the Distributory No. 8 at Jind was widened to give more water to Ramrai village, a footbridge over the Sunder Branch of Western Jumna canal for Nandgarh village, two outlets were promised from Distributory No. 2 for village Radhana, the size of the outlet of the Sunder Branch was increased, a new *Rajbaha* or minor was opened to benefit village Dingaria and the Jind Distributories were generally modified. None of these was accepted by the High Court as evidence of corrupt practice with a view to procuring the votes. It seems that it was conceded in the High Court itself that these orders were made by the first respondent in the ordinary course of

his duties as Minister for Irrigation. There was nothing to show that the first respondent went out of his way to do this. The point was, therefore, rightly decided against the appellant. A

Mr. Naunit Lal argued vehemently that any gift which has the effect of changing the minds of the voters is a corrupt practice. He read out to us the judgments of Ridley and Bucknill, JJ. from the *Borough of Kingston-upon-Hull*⁽¹⁾ case. In that case the charge against Sir Henry Seymour King was that he had distributed coals and given boxes of sweets to the children of the schools at the time or just before his election. The motive of Sir Henry Seymour King was never in doubt. The gifts were made to celebrate the twenty-fifth anniversary of his membership of the Central Division of Hull. After examining the cases on the subject of gifts such as the *Windsor*⁽²⁾ case the *Salisbury*⁽³⁾ case, the *Wigan*⁽⁴⁾ case, etc. the learned Judges avoided the election. In that case the presents were gratuitous and not in furtherance of any duty which Sir Henry Seymour King owed in any other capacity. In our courts this question has come up in different forms before and a word may be said about the cases. In *S. Mahar Singh v. Umrao Singh*⁽⁵⁾, the Punjab High Court held that a candidate making a promise to get the grievances of certain refugees as a body remedied and even getting the Revenue Minister to reinforce his promise was not corrupt practice. It was pointed out that the promise was not made to any particular voter or voters but to the general body of residents without distinguishing between those who were favourably inclined and those not. The gist of the corrupt practice, therefore, lay in attempting to do something for those opposed to the candidate with a view to changing their votes, and as a bargain for votes. A case in point is *Magarlal Bagdi v. Hari Vishnu Kamath*⁽⁶⁾ in which the candidate offered to construct a well in a village if the voters voted for him and not for the rival candidate. Money was actually deposited for this purpose and was to await the result of the election. Here there was a clear bargain for votes. As observed by this Court in *Khader Sheriff v. Munnuswami Gounder and Ors.*⁽⁷⁾ it may be meritorious to make a donation for a charitable purpose but on the eve of an election, such a gift may be open to construction that it was made with the intention of buying votes. As held in the *Wigan*⁽⁴⁾ case "charity at the election time ought to be kept by the politicians in the background." But when a question does arise, corrupt practice which is a charge quasi-criminal in nature, must be proved like any other fact. The gift must be proved to have a direct or indirect connection with votes. The gift must admit of no other

(1) 6 O'M & H 372.

(3) 40'M & H 28.

(5) A.I.R. 1961 Punjab 244.

(7) A.I.R. 1955 S.C. 775.

(2) 20 O'M & H 88.

(4) 4 O'M & H 13.

(6) 15 E.L.R. 205.

A
B
C
D
E
F
G
H

A reasonable excuse. In *Khader Sheriff's*⁽¹⁾ case the payment of Rs. 500 to the District Congress Committee was not held to be a charitable donation but expenditure incurred for furthering the prospects of the candidate. Omission to show it as expenses was regarded as corrupt practice. In *Radha Krishna Shukla v. Tara Chand Maheshwar*⁽²⁾ general promises by Ministers to redress certain public grievances or to erect certain public amenities like hospitals, if elected were held not to amount to corrupt practice. They were treated as promises of general public action. In *Gangadhar Maithani v. Narendra Singh Bhandari*⁽³⁾ promises of public action were held excluded from corrupt practice. Therefore a promise by a candidate that if he was elected he would see that expenditure on development plans was incurred in his constituency was held permissible. In *Balwant Rai Tayal v. Bishan Saroop*⁽⁴⁾, a promise to the Harijans of a locality by a candidate when he was canvassing for votes, that he would do his best to help them in the matter of retaining an old mosque as a temple and for getting land for building houses was not held to amount to corrupt practice.

D These cases which were cited before us are slightly different. But they point in the same direction. In *Amirchand v. Surendra Lal Jha*⁽⁵⁾ it was laid down that if a Minister redresses the grievances of a class of the public or people of a locality or renders them any help, on the eve of an election, it is not corrupt practice unless he obtains promises from the voters in return, as a condition for their help. In *Anjaneya Reddy v. Gangi Reddy and others*⁽⁶⁾. It was held that the proof required to establish a corrupt practice must be almost of the character required to establish a criminal charge.

F In our opinion the law requires that a corrupt practice involving bribery must be fully established. The evidence must show clearly that the promise or gift directly or indirectly was made to an elector to vote or refrain from voting at an election. The position of a Minister is difficult. It is obvious that he cannot cease to function when his election is due. He must of necessity attend to the grievances, otherwise he must fail. He must improve the image of his administration before the public. If everyone of his official acts done *bona fide* is to be construed against him and an ulterior motive is spelled out of them, the administration must necessarily come to a stand-still. The State of Haryana came into existence on November 1, 1966. With an election in the near future, the political party had to do acts of a public nature. The grant of discretionary grants were part of the general scheme to better community development projects and to remove the imme-

(1) A.L.R. 1955 S.C. 775.

(3) 18 E.L.R. 124.

(5) 10 E.L.R. 57.

(2) 12 E.L.R. 376.

(4) 17 E.L.R. 101

(6) 21 E.L.R. 247.

diate grievances of the public. The money was required to be spent in about 3 months' time. The action of the Minister had often the concurrence and recommendation of his subordinate staff. It is for this reason that the orders about the improvement of the supply of waters were not pressed. They were incapable of being construed against the first respondent. Therefore, emphasis was placed upon the distribution of money. The money was not distributed among the voters directly but was given to Panchayats and the public at large. It was to be used for the good of those for and those against the candidate. No doubt they had the effect of pushing forward his claims but that was inevitable even if no money was spent, but good administration changed the people's condition. We cannot, therefore, hold that there was any corrupt practice. If there was good evidence that the Minister bargained directly or indirectly for votes, the result might have been different but there was no such evidence.

Although we have held in this case that the action of the first respondent cannot be characterised as not innocent, we are constrained to say that the attitude of Government is far from laudable. Election is something which must be conducted fairly. To arrange to spend money on the eve of elections in different constituencies although for general public good, is when all is said and done an evil practice, even if it may not be corrupt practice. The dividing line between an evil practice and a corrupt practice is a very thin one. It should be understood that energy to do public good should be used not on the eve of elections but much earlier and that even slight evidence might change this evil practices into corrupt practice. Payments from discretionary grants on the eve of elections should be avoided.

As regards the last point we are satisfied that the conclusion of the High Court is correct. The evidence about influencing the Patwaris is most unsatisfactory. We do not think it necessary to discuss the evidence over again.

In the result the appeal fails and will be dismissed. There shall be no order about costs.

R.K.P.S.

Appeal dismissed.

A

B

C

D

E

F

G