

Ambika Sharan Singh

Vs

Mahant Mahadeva and Giri and Others

Civil Appeal No. 1516 of 1968

(Shelat JJ)

02.02.1969

JUDGMENT

SHELAT, J. -

1. This appeal is against the order of the High Court of Patna declaring the appellant's election from Barhara Assembly constituency, Bihar, void under Section 100(1) of the Representation of the People Act, XLIII of 1951.

2. At the time of the general election in February, 1967, the appellant was the Minister of State in the Finance Department of the State of Bihar. There were in all 8 candidates contesting from Barhara constituency. The poll day was February 15, 1967. Having obtained 21,791 votes against 20,243 votes obtained by respondent 1 (the election petitioner), the appellant was declared elected.

3. In the election petition filed by Respondent 1 thereafter, he made a number of allegations of diverse corrupt practices giving particulars thereof in more than 10 schedules. In his written statement the appellant denied all these allegations and also filed a recriminatory petition under Section 97 of the Act. On these pleadings the High Court raised as many as 13 issues. The parties examined 292 witnesses in all besides producing documentary evidence. In an elaborate judgment, the High Court after examining the voluminous evidence led by the parties held the appellant guilty of 3 corrupt practices, namely, of distributing money to Harijan voters in various villages as bribery, of having canvassed on the basis of his caste, namely, Rajput, and of having obtained or procured the assistance of 4 gazetted officers, namely, R. Ws. Sheo Bachan Singh, Muni Lal R. S. Prasad and Bhaupender Narain Singh, all of whom except Muni Lal being in the Department of Commercial Taxes which was under the charge of the appellant. The High Court declined to uphold the rest of the allegations on one ground or the other. The recriminatory petition filed by the appellant was not present and was accordingly dismissed. Consequently, we are concerned in this appeal with the aforesaid 3 alleged corrupt practices held by the High Court established. The question for determination is, therefore, whether the High Court was correct in holding the appellant guilty of the said three practices.

4. Section 100(1) of the Act inter alia provides that subject to the provisions of sub-section (2), if the High Court is of opinion that any corrupt practice has been committed by a returned candidate or his election agent or by any other persons with the consent of a returned candidate or his election agent or that the result of the election, in so far as it concerns a returned candidate, has been materially affected by an corrupt practice committed in the interest of the returned candidate by an agent other than his election agent, it shall declare the election of the returned candidate to be void. Section 123 enumerates various corrupt practices including bribery, appeal by a candidate or his

agent or by any or refrain from voting for any person on the ground of his caste or community for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate, and the obtaining or procuring by a candidate or his agent or by any other person with the giving of vote for the furtherance of the prospects of that candidates selection from any person in the service of the Government and belonging inter alia to the class of Gazetted officers.

5. On the question of bribery to Harijan voters the evidence fell into two categories : one alleging that money was distributed amongst the Harijans in the presence of the appellant, and the other alleging distributing by Ram Bilas Singh, the appellants election agent and his other agents. As regards the first category of evidence, there was only one witness. P.W. 111 of Barhara who deposed that it was in the presence of the appellant and the gram sevak of Barhara that the appellants agent Tapeshwar, R.W. 67, distributed money to certain Harijans of Barhara. Against the said Ram Bilas Singh and other agents there were however a number of witnesses from different villages alleging that those agents paid various amounts in their presence to the Harijans of those villages. Against Ram Bilas Singh there was evidence of 7 witnesses from villages Chinnegaon, Sohra, Rampur, Noorpur and Jagatpur. All these witnesses deposed that they saw Ram Bilas Singh going to the Harijan quarters of these villages and paying Rs. 2/- to each Harijan residing there. Ram Bilas Singh was examined by the appellant as R.W. 32 and he denied in general the allegation of bribery but no specific questions in relation to the evidence of these witness was put to him or any denial taken. Tapeshwar Singh, R.W. 24 worked as the appellant agent. Against him there was evidence of 9 witnesses from villages Keshopur, Mohanpur, Basantpur, Lauhar, Ekawna, Babura, Daulatpur and Barhara. Evidence of distribution who was then the Assistant Superintendent of Commercial taxes at Chaibassa consisted of the testimony of P. Ws. 85, 98, 102 and 118 of villages Balbhangwan, Fuha and Rampur. Against Ram Sunder Singh, the uncle of the appellant, there was the evidence of P. Ws. 47 and 114 of villages Ghoradei and Hemantpur. As against this evidence the appellant examined himself and the said Ram Bilas Singh, Tapeshwar Singh, Ram Chandra Singh, Sheo Bachan Singh and Ram Sunder Singh and all of them denied having given any money to the Harijans as bribe. The High Court accepted the evidence of the witnesses of Respondent 1 and rejecting the denials of the appellant and his witnesses and held that bribery was given by the appellant, his election agent and with his consent by the other agents to Harijan voters of the aforesaid villages with a view to induce them to vote for him.

6. On the question of appeal on the ground of caste, the allegation was contained in para 23 of the petition and Schedule VI thereto. The allegation was that between the 12th and the 14th of February, 1967 the appellant, his said election agent and other agents canvassed votes for him on the basis that the appellant was Rajput, that if he was elected he would become a minister, that one Satyendra Narain Singh, also a Rajput, would become the Chief Minister and that with the two of them in the cabinet they would established Rajput Raj in the State and advance the interests of Rajputs. In support of the charge, Respondent 1 produced in all 71 witnesses from different villages where the appellant and his agents were said to have canvassed on the aforesaid basis. These witnesses were both Rajputs and non Rajputs and expressly give the names of the appellant and his canvassers who include Kalika Singh, Jai Narain Singh, the said Muni Lal, the said Sheo Banchan Singh and one Dinesh Singh. The learned Trial Judge, howground that their names did not appear in Schedule VI. The aforesaid witnesses came from villages Chatter, Bhadeyan, Keshopur, Sanjoyal, Sinha, Chhinegaon, Milky, Mohanpur, Tola Acharajlal, Basantpur, Gaziapur, Purshotampur, Kaotia, Karari, Veria, Farhada, Fuhana and several other villages. Their evidence was that the appellant, the said Ram Bilas Singh, Tapeshwar Singh, Ram Chandra Singh, Awadesh Kumar Singh, Dwarka Singh and Chandrika Prasad Singh, all agents of the appellant, campaigned on the basis that the appellant

was a Rajput and that the Rajput voters in these village should therefore, vote for him. The Trial Judge examined the evidence of each of these witnesses separately in the light of the criticism offered against it on behalf of the appellant and the evidence given by him and his agents and accepted it holding that he found no valid reason why so many witnesses should come forward to falsely depose against the appellant and his agents and held that corrupt practice to have been proved.

7. The allegations that the appellant obtained or procured assistance from gazetted officers to further his electoral prospects is to be found in paras 16 and 19 of the petition and Schedule IV thereto. The appellant, denied the allegation in paras 29 to 45 of his written statement. The evidence in support of the allegation came from 43 witnesses hailing from about 26 villages. Apart from the oral testimony of these witnesses there was evidence that even before February 15, 1967 Respondent 1 had sent a telegram Ex. 4/X to the Chief Minister of the State complaining that the Assistant Commissioner and the Assistant Superintendent, Commercial Taxes, Arrah, were collecting money under threats from businessmen to assist the appellant and soliciting action. The Government thereupon ordered on February 15, 1967 that a detailed report regarding the said allegation should be sent to it. Thereafter the Personal Assistant to the Collector, Shahabad, Arrah, sent a letter Ex. 4/Y, dated February 17, 1967 calling upon Respondent 1 to furnish particulars. The Trial Court observed that as polling had already taken place by this time Respondent 1 did not pursue the matter any more. Besides the telegram, Respondent 1 had also written letters to the relevant authorities complaining against the Assistant Commissioner, the Assistant Superintendent, Commercial Taxes, Arrah, and R. S. Pradas, R.W. 5 as having canvassed for the appellant and requesting that these and other officers from the Department of Commercial Taxes should not be entrusted with the work of countering of votes as he had serious apprehensions about their bona fields. The allegation consisted of canvassing and collecting an election fund for the appellant by (1) the said Sheo Bachan Singh, (2) Muni Lal, the Deputy Collector on probation, (3) Bhupender Narain Singh, the Assistant Commissioner, Commercial Taxes, Arrah, and (4) R. S. Pradas, an Account Officer in the Department of Commercial taxes, Arrah.

8. There is no dispute that all these officers were gazetted officers and that officers 1, 3, and 4 were serving at the time in the Department of Commercial Taxes which was under the charge of the appellant. The purport of the evidence was that these officers had gone to the villages of these witnesses a few days before the polling day and threatened the shop-keepers there that if they did not vote for the appellant they would have to pay increased taxes. The four officers were examined by the appellant and all of them denied allegations made against them. The High Court, however, found that besides the testimony of these witness there was documentary evidence corroborating the witnesses and therefore rejected the denials of these officer and held the charge proved especially as there was nothing to show why to many witnesses should have deposed against the appellant and these officer. Thus, according to Respondent 1, the strategy, employed by the appellant was to garner as many sectional votes as possible (a) by bribing Harijan voters, (b) by making a caste appeal to the Rajputs, and (c) by coercing the shop-keepers through these officer, thus polluting the purity of the electoral process by a three-pronged effort.

9. To dispute the correctness of the findings of the High Court on these three charges, counsel for the appellant took us to the evidence of a large number of witnesses examined on behalf of the appellant and Respondent 1. Ultimately, however, he told us that the pattern of the evidence of these witnesses on all the three question both in their examination-in-chief and in cross-examination was common. Therefore, it is not necessary for us to burden this judgment with the details of the

evidence of each of these witnesses.

10. Of the three corrupt practices upheld by the trial court we propose first to take up for consideration those relating to appeal on the basis of caste and obtaining or procuring the assistance of gazetted officers by the appellant for the furtherance of his electoral prospects, for, if we are satisfied that Respondent 1 has succeeded in establishing either of these two charges and the appellant has not been able to dislodge the findings on them by the High Court it would not become necessary for us to go into the charges of bribery to Harijan voters. As held by this Court on more than one occasion if the appellant wants to challenge a finding of fact arrived at by the High Court it would be for him to show the reasons establishing its incorrectness.

The principal contention of counsel for the appellant was that it would be very easy for a defeated candidate to collect a number of witnesses from different villages to depose in general terms that the returned candidate had made an appeal to the voters on the basis of caste and if that were done it would become difficult for such an appointed to refute such general evidence. The only thing that a returned candidate in such circumstances can do is to answer such general evidence by an equally general denial, which the appellant and those of his agents who were charged of appealing on the basis of caste have done. He submitted that that being the position the trial court was in error in acting upon such evidence. He also submitted that neither in Para 23 nor in Schedule VI to the petition had Respondent 1 attributed to the appellant any particular village or villages where he compounded on the basis of his caste although in schedule VI he had ascribed certain villages to his election agent and other agents, that in schedule VI the name of each of these agents has been set out against a particular village or villages which meant that each of them was charged with carrying on caste-wise campaign in that village or villages only. The trial court, therefore, was in error in admitting evidence relating to villages other than those so named thereby prejudicating the appellant's opportunity to refute such evidence. He also argued that of the 8 candidates in this constituency the appellant, Respondent 1 and two other candidates were Rajputs. An appeal on the basis that the appellant was a Rajput could, therefore, hardly be effective as even then the Rajput vote would be divided. The Barhara constituency, he argued, being a composite constituency consisting of Rajputs and non-Rajputs, it was highly improbable that an appeal to the Rajputs on the basis of caste could have been considered appropriate as non-Rajput voters in the result would be alienated against the appellant. Besides, the evidence of witnesses examined under this charge was, according to him, vague and general in the sense that none of them spoke of the actual words used by each of the agents or gave names of the Rajput voters to whom they were addressed. There was also no documentary evidence in support of the testimony of these witnesses such as a pamphlet or a leaflet issued by the appellant or his agents. He further argued that of the 71 witnesses examined by Respondent 1 on this charge quite a number of them were interested witnesses in that they were either his polling agent or had expressed a dislike for the appellant and a corresponding predilection for Respondent 1. Lastly, he argued that from amongst the agents in respect of whom the charge was made, Sheo Bachan Singh, R.W. 51 and Muni Lal at least could establish that from the 13th to 15th February, 1967 they were working in their respective offices at Chaibassa and Bhagalpur both the places being far away from this constituency and therefore their evidence negated the charge made against the appellant.

11. Before we proceed to consider these submissions we may observe that there is evidence to show that there are a number of villages in this constituency where Rajputs form a considerable sector of the population. Thus, P.Ws. 6, 33, 34, 50, 108, 118, 121, 140, 145, 158, 32, 66, 128 and 138 have deposed that in their respective villages the Rajput population is considerable. Ram Bilas Singh, P.W. 32, has deposed that in this constituency the Rajput population would be from 20 to 25% of the

total population. Likewise, R.Ws. 4, 17, 20, 30, 35, 40, and 55 have all deposed that in village Pipra, Keshopur, Gundi, Lauhar, Hemantpur, Chattar and Ekawna the Rajputs form a predominant or at any rate a fair section of the population.

12. Indian leadership has long condemned electoral campaigns on the lines of caste and community as being destructive of the country's integration and the concept of secular democracy which is the basis of our Constitution. It is this condemnation which is reflected in Section 123(3) of the Act. Inspire of the repeated condemnation, experience has shown that where there is such a constituency it has been unfortunately too tempting for a candidate to resist appealing to sectional elements to cast their votes on caste basis. The contention of counsel, however was that there was on the other hand the danger of a frustrated candidate mustering a number of his followers to testify falsely in a vague manner that his opponent had campaigned on the basis of his caste or community. Therefore, before such an allegation is accepted, the Court must be on guard against such a possibility and must demand adequate particulars. A witness deposing to such an allegation must point out when, where and to whom such an appeal was made. That, said counsel, was not done and therefore the evidence of witnesses however numbers should not have been accepted.

13. But where the allegation is that such canvassing was widespread and at several places it would be impracticable to call upon the election petitioner to give the names of persons alleged to have been approached with such an appeal and the actual words spoken to each of them. If such an appeal is made, for instance, at a meeting it would be difficult for a witness to name those to whom such an appeal is made. It is for this reason that courts in England have made a distinction between bribery to voters and treating them. In the latter class of case, names of persons treated by the candidate have not been demanded though the election petitioner would be ordered to specify the character and extent of the alleged corruption. This is so even though the English law of elections emphasises the individual aspect of the exercise of undue influence, whereas what is material under our law is the commission of an act which constitutes corrupt practice. (See Halsbury's Laws of England, 3rd ed., Volume 14, p. 278). A command by a religious head to his followers that it was their primary duty to support a particular candidate was held sufficient to vitiate the election and it was not considered necessary to have the names of the persons to whom the command was addressed. (cf. *Ram Dial v. Sant Lal*. The case of *Chandrashekhar Singh v. Sarjoo Pradas Singh* relied on by Mr. Verma, is clearly distinguishable as the allegation there was of intimidation and assault of certain workers and voters who as a result of injuries inflicted on them had to be admitted in a hospital. The incident there was a single one where particulars were practical and not of a corrupt practice alleged to have been committed in respect of fairly large groups of persons at different places. The question as to the extent of particulars which the Court would demand depends on the circumstances of each case, the nature of the charge alleged and the quality and reliability of evidence before it. In the instant case the dates, places and the persons by whom the appeal on the ground of caste was made and even the contents of such an appeal were furnished in the pleadings as also in the evidence. In some cases the witnesses deposed that they themselves were approached to vote for the appellant on the ground that he was a Rajput by caste, that if elected he would be a minister and in collaboration with the said Satyendra Narain Singh, who would become the Chief Minister, Rajput interests would be consolidated in the State. In the circumstances we cannot agree that merely because the witnesses did not give the names of voters to whom the appeal was made their evidence could not or should not have been accepted. The Trial Judge though it in the circumstances of the case to be sufficient even in the absence of those names and we do not feel compelled to come to the conclusions that he was in error in doing so.

14. Contentions 2 and 3 of Mr. Verma arise clearly as a result of a misunderstanding of Para 23 of

the petition and Schedule VI. The argument was : (1) that though it was alleged that the appellant campaigned on caste basis and though villages where his workers campaigned in the like manner were set out in the said para no particular village was mentioned in relation to the appellant, and (2) that as certain villages were set out against the name of each of the said agents evidence against them should have been confined with reference to those villages only and not in respect of other villages. Para 23 in express terms contains the averment that the applicant and his workers named therein carried on propaganda on the basis of caste in various villages mentioned therein. It is wrong to read in that para that those villages were set out with reference to his workers only and not with reference to him also. Schedule VI refers to the appellant's workers only who conducted the said campaign and therefore it did not mention the appellant. It contains three columns, the first of them gives dates when the said appeal was made, the second the names of the appellants agents who made it and the third the villages where it was made. It is wrong to read the second and the third columns of the Schedule as if certain villages were set out against each of the said agents. The contentions that evidence in respect of villages other than those set out against the said agents was wrongly admitted cannot therefore be sustained.

15. Contention 4 was that of the 8 candidates in the constituency, the appellant, Respondent 1 and two others being Rajputs, an appeal on the basis of the appellant being a Rajput was scarcely probable as such an appeal on the contrary would divide the Rajput vote. We think there is no substance in this contentions because even if there are more than one contestant belonging to a particular caste, one of them may appeal on the basis of his caste are likely to be induced to vote for the one who campaigns on the sectarian basis and promises to advance their interests rather than for the others who do not so appeal and induce. Respondent 1 is admittedly a sadhu and the evidence shows that though several allegations were made against him in respect of his activities he was doing work for social and educational advancement. His case was that he had renounced his caste and served his connection with his family right from his childhood. It is importance to bear in mind the fact that none of the appellants witnesses deposed that either Respondent 1 or the other Rajput candidate appealed to the voters on the basis of caste. As aforesaid, Rajput candidate appealed to the voters on the basis of caste. As aforesaid, Rajput vote in this constituency would be divided only if the other candidates also were to appeal on the basis of caste but not otherwise. Further, the appeal on behalf of the appellant that the said Satyendra Narain Singh will be the Chief Minister and "Rajput Raj" will be established was not available to the other Rajput candidates. The fact, therefore, that there were other Rajput candidates cannot mean that Rajput vote would necessary be divided and therefore the contention that it was improbable that the appellant would indulge in such an appeal does not seem to be correct.

16. The next argument was that Barhara constituency was a composite one and therefore if the appellant and his agents were to campaign on caste basis those belonging to the other castes would be alienated against him and consequently such an appeal instead of advancing his cause would prove detrimental. In the first place, such a propaganda would be restricted to the members of his caste and not to those of other castes. The propaganda would be stealthily done and not openly as the candidate must know that it would have an adverse effect on others and also that it could be used against him as a corrupt practice. In the second place, Rajputs as testified by the appellants election agent formed 20 to 25% of the total population. It is not impossible that a candidate inclined to campaign on the caste basis would concentrate on his caste votes and at the same time leave his party propaganda machine to campaign amongst the rest of the population. It would not, therefore, be correct to say that such a campaign would be improbable and therefore evidence that such canvassing was conducted should have been rejected.

17. But the contention which counsel emphasised most was that the evidence under this head being vague, it should not have been acted upon unless it was corroborated by some documentary evidence and that such documentary evidence would have been available if Respondent 1 had lodged a complaint with the relevant authorities immediately when he came to know that caste appeal was made by the appellant and his agents. But when the complaint could have been lodged, though he named the returning officer, the chief election officer of the State and even the election commission he had to concede that none of these authorities could have taken any preventive action. He conceded that at best such a complaint would have served as evidence of Respondent 1 having protested at the earliest opportunity. On the other hand, it would also be possible for his opponent to urge that having realised that he had lost the contest he was preparing evidence for further election petition. There being thus no preventive remedy and the alleged campaign having been carried on, on the eve of the polling day, counsel, in our view, was not justified in seeking to make a point that no complaint was immediately lodged by Respondent 1. Reliance, however, was placed on *Sri Raj Deb v. ...* was correctly decided as the decision in that case is clearly distinguishable. As some of the corrupt practices there alleged constituted offences under Section 171(c), 171(f) and 508 of the Penal Code and the election petitioner was a lawyer he was criticised by the High Court for not lodging a complaint at once. Though the High Court conceded that prior sanction under Section 196 of the Code of Criminal Procedure was necessary for the prosecution of such offences and such sanction would not have been forthcoming before the polling day, nonetheless it held that absence of a contemporaneous complaint threw considerable doubt on the truth of his allegations. In the present case there is no question of Respondent 1 having had to file a first information report for any offence under the Penal Code. As we shall presently point out wherever preventive or punitive action was available he did in fact lodge such a complaint and did all that could in the circumstances.

18. Counsel next argued that though there were as many as 71 witnesses deposing against the appellant and his agents, there were quite a large number of them whose testimony the High Court should not have implicitly accepted. His criticism in this respect was two fold : firstly, he would eliminate witnesses (a) who admitted having worked as polling agents of Respondent 1, and (b) those, who, in the course of their evidence admitted that they had wished the success of Respondent 1 and the effect of the appellant and secondly, all those whose evidence was not relied on by the High Court on the question of distribution by the appellant of hand pumps at various places as an inducement to the residents thereof to vote for him. The High Court did not rely on the evidence of these witnesses under that charge as it came to the conclusion that those pumps were installed much earlier and that these witnesses, to being in the allegation within the definition of bribery, had attempted to bring down the said distribution to dates just before the polling day. We do not in the present case have to decide whether a person acting as a polling agent or countering agent or a person wishing the success of a particular candidate is necessarily an interested witness. Assuming that he is, his evidence cannot be rejected only for that reason. At the most the Court in such a case would scrutinise his testimony closely and demand corroboration before acting upon it. In the case of a witness, part of whose testimony has not been accepted, it does not follow that his entire testimony must needs be discarded. The maxim *falsus in uno falsus in omnibus* has been held even in criminal cases to be neither a sound rule of law nor a rule of practice. (See *Ugar Ahir v. The State of Bihar*). It is at best a rule of caution, (see *Nisar Ali v. The State of Uttar Pradesh*), and such witnesses would require corroboration before their evidence is acted upon.

19. But, even if we were to eliminate the witnesses who according to Mr. Verma would fall into his two categories they would number 34 and there would still remain 37 out of 71 witnesses, whose evidence would have to be considered untainted and unblemished and against which the appellant could not assign any reason for rejection. The evidence of those 37 witnesses can legitimately be

said to corroborate the evidence of those 34 witnesses even if we were to treat them as interested witnesses. The result then is that of the High Court accepted that evidence as satisfactory and come to its finding, there would hardly be any justification for interfering with it. That evidence shows that the campaign on the basis of caste was carried on at numerous places, at some places by appellant himself and at some places by others in his presence and at others by several workers of the appellant including his election agent. It is impossible to think that the appellant was not aware of it and yet there was not even a whisper in his evidence or in that of any of his witnesses that he either disowned it or endeavored to prevent it. The conclusion, therefore, is inevitable that it was done with his consent direct or implicit. The High Court consequently was right in its conclusion that the appellant was proved to have committed the corrupt practice falling under Section 123(3).

20. The finding by the High Court that besides appealing to the voters on the basis of caste the appellant also committed another corrupt practice, that of obtaining and procuring the assistance of four gazetted officers to further his electoral prospects, rested on ocular testimony as well as documentary and circumstantial evidence. The allegation was that these four officers not only canvassed for but by threats and intimidation also collected election funds for the appellant from the shop-keepers of several villages. There were 8 witnesses from Gundi, Suraiya, Keshopur, Udaipur, Babura, Jopahri, Dhanwaha Bazar, Lachmipur and Chatter who deposed to the said Bhupender Narain Singh, R.W. 49, having canvassed for and collected election funds for the appellant. In respect of the said Sheo Bachan Singh, R.W. 51, there were as many as 21 witnesses from Chatter, Chiran, Keshopur, Meerganj, Lauhr, Babhangwan, Funhan, Babura, Rampur, Mohanpur and Bhekura deposing to his having canvassed for the appellant on the basis of caste. Against Ram Sunder Prasad, R.W. 58, there were two witnesses, P.W. 61 from Dularpur and P.W. 65 from Ratanpur, and against Muni Lal, R.W. 66, there were 12 witnesses from Gyanpur, Bhagalpur, Piparpanti, Ekawna, Gundi, Babura, Pakeri and Jagatpur. All these witnesses testified to their having seen these four officers canvassing and Bhupender Singh collecting funds from shop-keepers in their respective villages. These four officers denied having either done the canvassing or collecting funds as alleged by these witnesses. Sheo Bachan Singh and Muni Lal claimed that they were at their respective offices at Chaibassa and Bhagalpur and therefore the allegation against them was untrue. The Trial Judge, however, felt that it was highly improbable that so many witnesses from so many villages should give false evidence against such highly placed officers without any reasons and accepted their evidence discarding the denials of these officers especially as that evidence was supported by documentary as also circumstantial evidence.

Counsel for the appellant challenged the veracity of these witnesses on the following grounds : (1) that there was no evidence of the appellant having obtained or procured the assistance of these officers, (2) that the evidence was vague as none of the witnesses gave the names of the shopkeepers whom these officers approached for canvassing and for funds nor had they given the amounts collected from them, (3) that the evidence showed that Sheo Bachan Singh and Muni Lal were at Chaibassa and Bhagalpur and that therefore the evidence against them was false, and (4) that the evidence of several of these witnesses could not be acted upon for the two reasons given by him.

21. As regards the first contention, it is true that there is no direct evidence of the appellant having requisitioned the services of these officers. Such direct evidence, however, can hardly be expected on a charge such as getting the officers to work for him. The fact, however, is that three out of them belonged to the Department of Commercial Taxes which was directly in charge of the appellant. If the evidence of these witnesses were to be accepted there would be no difficulty in coming to the conclusion that it was highly improbable that without the assent of the appellant these officers would move about in so many villages on their own for canvassing and collecting funds on behalf of

the appellant. It is true that the witness did not give the names of those who were approached nor the amounts collected from them. But such particulars could hardly be expected for such canvassing and collection could not have been done in the presence of others and the shop-keepers were hardly likely to disclose the amounts they paid for fear that they would be victimised by the officers. The failure of these witnesses to give these particulars cannot therefore be over-emphasised and on that ground alone their evidence discarded. However, it is not as if the charge was solely founded on oral testimony.

22. As early as July 1966, one Jagat Narain Tiwari, a Congress M.L.A., published a hand-bill and sent a copy thereof to the Prime Minister at Arrah collecting an election fund on behalf of the appellant. He also alleged in that hand-bill that two or three cases had come within his personal knowledge but "the poor businessmen may not say anything out of fear to anybody. Tiwari was not examined but the printer of the hand-bill proved his printing charges and the hand-writing of Tiwari on the manuscript given on record as proved but no objection was taken to the hand-bill going on record and exhibited as Ex. 9. There was evidence also that 300 copies of this hand-bill were printed and freely distributed. Though the handbill was brought on record and though its author was an M.L.A. from his own party, the appellant did not testify that he had at any time refuted the serious charges made therein against him. In the case of any other ordinary person if the allegations were false it might be that he might view the hand-bill with indifference. But here was a minister against whom very serious charges were made in connection with the officers of his department. It can hardly be believed that if the allegations were totally false a person in the position of the appellant, charged by his own party man before the Prime Minister and the public, would remain silent and not refute the allegations.

23. There was next the telegram by Respondent 1 to the Chief Minister complaining against the Assistant Commissioner of Commercial Taxes, Arrah, i.e., Bhupender Narain Singh, and the Assistant Superintendent of Commercial Taxes, Arrah. The telegram must have been sent before February 15, 1967 as there is a letter on record, dated February 15, 1967 by a Deputy Secretary to the Government to the District Magistrate, Shahabad, asking for a report. The P.A. to the Collector thereupon by his letter of February 17, 1967 called upon Respondent 1 to furnish particulars regarding his complaint. No such conclusion must follow for by the time Respondent 1 received the letter, the polling day had already gone by and if there was truth in his allegations the mischief had already been committed. Besides, neither the District Magistrate nor the Chief Minister nor the election authorities could have taken any preventive action. It is, therefore, not surprising that Respondent 1 did not pursue the matter then and reserved the charge till he filed the election petition. Even after the polling day, Respondent 1 by his letter Ex. 1/A of February 22, 1967 requested the District Returning Officer not to appoint the said Bhupender Singh and R. S. Pradas as counting officers as he had fears about their bona fides. Thus, it was not as if Respondent 1 remained altogether quite.

24. So far as Bhupender Singh was concerned, besides the evidence mentioned above, there was the further evidence of two trunk calls of January 3 and one of January 23, 1967 between him and the appellant. The first two calls were at his office and the third at his residence at Arrah and they were calls made from the residential telephone of the appellant. These calls were duly proved by the telephone bill Ex. 7. Ordinarily, not much importance could be given to these telephone calls but for two facts, one, that when faced with the bill Bhupender Singh tried to evade the issue by stating that he did not remember the two telephone numbers and therefore could not say whether he had talks with the appellant, and the second that a minister was hardly likely to have a direct conversation on telephone with a subordinate officer on official matters. If he wanted to give any official

instructions, they would ordinarily be converted through his secretary or at any rate through the head of the department. When faced with this bill, this officer did not explain the occasion for the telephones or their subject-matter but instead tried to take shelter behind his failure to remember his telephone numbers. That was impossible to believe as he was at Arrah for 2 1/4 years, had used the two telephones during all that period and was transferred from that place only 7 months before he gave evidence. In the circumstances we agree with the Trial Judge that the appellant and this officer had talks at least on these 3 occasions on trunk calls and their conversation could not be in respect of any official work but was with respect to the election.

25. The other officer, Sheo Bachan Singh, R.W. 51, is a Rajput by caste and at the time of the election held the post of Assistant Superintendent of Commercial Taxes at Chaibassa. His own village did not fall within Barhara constituency and Chaibassa is far away from Barhara. But his wife came from Rampur which is only 1 1/2 miles away from Barhara and though his own village is not within this constituency, it is only 7 miles away from Barhara. Though the telegrams and letters referred to above mention the Assistant Superintendent of Commercial Taxes, Arrah, they really mean this officer, Arrah having been mentioned therein through mistake. 21 witnesses deposed that being a Rajput by caste his officer canvassed for the appellant on the ground of caste in various villages. His case was that he could not have done the things attributed to him as he was on the dates alleged by the witnesses at Chaibassa working in his office. But the documentary evidence falsifies his case. Exs. 4(5), 4(z)(5), 4(z)(6) and 4(z)(7) show that on February 11, 1967 he applied to the Deputy Commissioner that he had high fever and feared that he would have an attack of small-pox and therefore should be relieved from election duty. The Deputy Commissioner consequently had as an alternative arrangement to appoint one Sinha in his place. Ex. 4(z)(5) shows that he was not exempted or relieved from election duty and yet he did not report for election duty. No order relieving him from election duty was issued. The excuse under which he tried to get rid of the election duty was obviously untrue because according to him he worked in his office at Chaibassa from February 13 to February 15, 1967. That part of his evidence also does not appear to be true because though he said that he maintained a daily diary of work done by him at Chaibassa he did not produce it in support of his case that he had worked during those days at Chaibassa. Apart from the diary, he could have also produced the files on which he must have worked and passed orders. From the evidence of witnesses examined by Respondent 1 he must have known that he was charged of being deeply involved in the appellants election work and must have been aware that he could prove his being at Chaibassa if he were to produce his diary or better still the said files. One cannot help thinking that if that evidence was there it is impossible that he would fail to produce it. The inference is inescapable that he abstained from performing election duty at Ichagarh as he was anxious to be free to do the canvassing work with which the witnesses charged him. In the absence of any order from the Deputy Commissioner relieving him from that duty he could not have ventured not to report on duty unless he was certain that he would be protected by the appellant if any steps were taken against him. The evidence clearly indicates that his application and the reasons given therein for being relieved from duty could not be true.

26. R. S. Prasad, R.W. 58, was at the material time the Accounts Officer in the Department of Commercial Taxes. Besides the complaint, Ex. 1(a), against the officer of this department there was clear allegation by Respondent 1 that he had canvassed for the appellant and being therefore his worker he should not be entrusted with the work of counting votes. Against Muni Lal it must be said that there was no documentary evidence. Thus, except in the case of Muni Lal there was against the three other officers both documentary as well as circumstantial evidence to support the oral evidence of the witnesses.

27. It is true that some of the witnesses who gave evidence against these officers had acted as polling agents of Respondent 1, the evidence of some of them was not accepted by the Trial Judge under the charge of distribution of hand-pumps and some of them had during their evidence admitted a liking for respondent and corresponding dislike for the appellant. Even if we were to eliminate the evidence of these witnesses from consideration on the ground that they were interested witnesses there would still remain against each of these officers witnesses against whose evidence no blemish could be pointed out by Mr. Verma. Their evidence together with the documentary and circumstantial evidence would go to corroborate the evidence of the witness who Mr. Verma called interacted witnesses. There was sufficient evidence on which the learned Trial Judge could legitimately base his finding against at least 3 officers, namely, Bhupinder Singh, Sheo Bachan Singh and R. S. Prasad. Since there is no documentary or circumstantial evidence against Muni Lal and he was not under the direct control of the appellant we do not propose to hold's a matter of abundant caution that his services were obtained or procured by the appellant. In our view, Mr. Verma has failed to establish any substantial reason for disagreeing with the aforesaid conclusion arrived at by the Trial Judge.

28. In the view that we have taken in respect of these two corrupt practices it is not necessary, as already stated, to do into the question of the third corrupt practice, namely of bribery to the Harijan voters. The Trial Judge, in our view, was right, in view of his aforesaid findings, in declaring the said election void.

The appeal therefore fails and is dismissed with costs.

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