

Magraj Patodia

Vs

R. K. Birla And Others

Civil Appeal No. 1094 of 1969

(K. S. Hegde, A. N. Grover JJ)

10.09.1970

JUDGMENT

HEGDE, J. -

1. This appeal raises the question as to the validity of the election of Mr. R. K. Birla to the Lok Sabha, in the General Election held in 1967, from the Jhunjhunu constituency in the State of Rajasthan. The election for the constituency was held in the month of February, 1967. The notification calling upon the constituency to elect one member to the Lok Sabha was published on January 13, 1967. The last date for filing the nomination was January 20, 1967. Several persons filed their nominations but some of them withdrew later. Eleven persons including Mr. R. K. Birla (respondent No. 1) and Mr. Morarka Radheshyam (respondent No. 2) contested the election. The polling took place on February 15, 18 and 20th. Counting commenced on the 21st of that month and completed on the 23rd on which date results were declared. According to the declaration made by the Returning Officer, respondent No. 1 secured 1,50,546 votes and respondent No. 2, 1,04,023. It is not necessary to refer to the other candidates in the course of this judgment. Respondent No. 1 was declared elected.

2. The appellant who is a voter in the Jhunjhunu constituency and a supporter of Mr. Morarka challenged the election of the respondent under Section 81 of the Representation of the People Act, 1951 (which will hereinafter be referred to as the Act), on various grounds. His petition was tried and dismissed by a single judge of the Rajasthan High Court. Thereafter he has brought this appeal under Section 116-A of the Act.

3. The election of respondent No. 1 was challenged on various grounds. It was alleged that he had committed corrupt practices coming under Section 123(1) (bribery), 123(4) (false statements) as regards the personal character and conduct of respondent No. 2, 123(5) (hiring or procuring vehicles for the free conveyance of electors) and 123(6) (incurring or authorising the incurring of expenditure in contravention of Section 77). The respondent denied the allegations made against him. At the trial of the case most of the grounds alleged in support of the petition were not pressed. At present we are only concerned with the allegation that respondent No. 1 had incurred or authorised the expenditure in contravention of Section 77 in connection with his election. Section 77 of the Act reads :

"Amount of election expenses and maximum thereof :

(1) Every candidate at an election shall, either by himself or by his election agent, keep a separate and correct account of all expenditure by him or by his election agent

between the date of publication of the notification calling the election and the date of declaration of the result thereof, both dates inclusive.

(2) The account shall contain such particulars as may be prescribed.

(3) The total of the said expenditure shall not exceed such amount as may be prescribed."

4. Section 123(6) declares that incurring or authorising of expenditure in contravention of Section 77 is a corrupt practice. The maximum amount of expenditure prescribed for the Jhunjhunu constituency was Rs. 25,000/-. The return of respondent No. 1 showed that his total expenditure in connection with the election was Rs. 16,380.96 P. If it is shown that the total expenditure incurred either by respondent No. 1 or his election agent or by others with their consent or under their authority exceeded Rs. 25,000/- then the election of respondent No. 1 must be held to be void.

5. In the election petition the petitioner alleged that respondent No. 1 was an independent candidate; and that he was put up by the House of Birlas, one of the wealthiest business houses in the country who own and/or control and/or manage several companies. It was further alleged therein that respondent No. 1 himself was a man of considerable means. According to the petitioner during the course of election campaign many top executives of several companies owned or controlled by the House of Birlas were brought by respondent No. 1 to the constituency and they lived there for over a month and worked for respondent No. 1. Several leading members of the Birla family of Birlas including Mr. Ghanashyamdas Birla, Mr. Madho Prasad Birla, Mr. K. K. Birla and others stayed in the constituency and canvassed for respondent No. 1. He further alleged that vast material and human resources of several companies of the House of Birlas were drawn upon by the respondent No. 1 for his election campaign. Besides the Chief Executive Officers, hundreds of other Executive Officers and employees of several companies of the House of Birlas were also brought by respondent No. 1 from several places to the constituency for campaigning in his favour. The petitioner alleged that several lakhs of rupees were spent by respondent No. 1 in connection with his election. Proceeding to give particulars about the expenditure incurred he stated that the respondent No. 1 got printed lakhs of posters, pamphlets, leaflets and cartoons and got them distributed throughout the constituency and in that connection he spent about 2 lakhs of rupees; he made a film of some meetings held and exhibited that film in various parts of the constituency and in that connection spent about Rs. 30,000/-; he employed a singing party which was taken by a motor truck from village to village for the purpose of reciting songs and performing Bhajans and for that purpose spent about Rs. 3,000/-; he used about 200 jeeps and cars for his election campaign and in that connection incurred or authorised an expenditure of Rs. 6,00,000/-; for some of these jeeps (which were not hired) he incurred or authorised an expenditure of about Rs. 30,000/- as drivers' salaries; he requisitioned the services of about 3,000 employees of the Birla concerns and for their maintenance and travelling expenses incurred more than Rs. 10 lakhs; he had 150 officers in the constituency and for their maintenance spent about Rs. 75,000/-; he set up 80 messes at different places for feeding his canvassers as well as the electors and for that purpose he spent about Rs. 2 lakhs; he organised nearly 225 meetings and for that purpose incurred an expenditure of Rs. 33,750/-; for trunk calls in connection with the election, he spent about Rs. 5,000/-; for the repairs of the jeeps used in connection with the election spent about Rs. 50,000/- and lastly spent about Rs. 75,000 for hiring jeeps. Some of the items of expenses mentioned above were not pressed at the hearing. We shall not refer to them in the course of this judgment. We shall confine our attention to only those heads of expenditure which were pressed for our acceptance.

6. Before we proceed to consider the merits of the case, it is necessary to mention that in the memorandum of appeal, the appellant had urged that in the High Court he was not given reasonable opportunity to put forward his case. He complained that his applications for examination of certain witnesses on commission were improperly rejected; he was not given sufficient opportunity to procure the attendance of the witnesses and lastly several documents produced by him in support of his case were improperly rejected. When the hearing of the appeal was taken up we suggested to the learned counsel for the appellant, Mr. A. S. R. Chari to first deal with the plea that the appellant was not given reasonable opportunity to prove the case pleaded by him. After taking up that plea and arguing the appeal for sometime Mr. Chari informed us that he would not press that part of his case as he did not want the case to be either remanded or additional evidence taken in view of the fact that the next General Election is not far off. He informed us that he would argue the appeal on the basis of the evidence on record. At this stage it may also be mentioned that no application had been made in this Court for taking additional evidence. In view of the concession made by Mr. Chari, we will confine our attention to the merits of the case on the basis of the evidence on record.

7. Mr. Chari's case was that Mr. Morarka had incurred the wrath of the members of the family of Mr. Ghanashyamdas Birla due to the fact that as Chairman of the Public Accounts Committee of the Parliament he had dug up many skeletons from the cupboards of some of the Birla concerns. It may be mentioned at this stage that Mr. Morarka was representing the Jhunjhunu constituency in the Lok Sabha from 1962 to 1967 and earlier as well and for a considerable time he was the Chairman of the Public Accounts Committee. The further case of Mr. Chari was that because of the hostility of the members of the Birla family towards Mr. Morarka, the members of that family sponsored the candidature of respondent No. 1 who was one of their top Executives, he being the Chairman of Shri Digvijay Woollen Mills Ltd., Jamnagar, a Birla concern and the President of a Chemical Company at Porbandar which is also a Birla concern. According to the appellant, respondent No. 1 was really an independent candidate but in order to facilitate him to exercise his money power as well as the money power of the Birla concerns, he posed as a Swatantra Party candidate. It was said that a great deal of money was spent by the members of the Birla family and also by the companies under their control to further election prospects of respondent No. 1. Mr. Chari further contended that respondent No. 1 in agreement with the several members of the Birla family and some of the top officials of Birla concerns had devised a plan for spending money in connection with the election and the entire expenditure was incurred in accordance with that plan.

8. At the very outset, we may mention that respondent No. 1 is not a member of Mr. G. D. Birla's family though it is established that he is one of their top executives. It also appears from the evidence that several members of the Birla family as well as other industrialists were keenly interested in the success of respondent No. 1. It may also be, as contended on behalf of the appellant that they were keen on defeating Mr. Morarka. Even according to the appellant the members of Birla family had both the means as well as the cause to spend for furthering the election prospects of respondent No. 1. But the real question for our decision is whether any expenditure in connection with his election was incurred by respondent No. 1 or by his election agent or by others with his consent or under his authority in excess of the amount shown in his return and if so what that amount is? The expenditure incurred by the Swatantra Party or other friends or supporters of respondent No. 1 or by the enemies of Mr. Morarka without the consent or authority of respondent No. 1 cannot be taken into consideration as the law now stands.

9. In the election petition, the petitioner took the stand that respondent No. 1 was an independent candidate. It was not suggested therein that he was only nominally a Swatantra candidate and that he

used the Swatantra Party as a shield to cover the enormous expenditure that he planned to incur during the election campaign. In fact in the election petition there is no reference to the Swatantra Party. It is now established and it is not denied that respondent No. 1 was a Swatantra Party candidate. His symbol in the election was the "Star", the symbol assigned to the Swatantra Party by the Election Commission. The plea of the petitioner that in truth and reality, respondent No. 1 was an independent candidate cannot be accepted. The charge that during the election expenditure was incurred by various persons in accordance with a preplanned design devised by respondent No. 1 and others was also not pleaded in the election petition. That ingenuous contention appears to have been put forward only with a view to make it appear that expenditure incurred by the Swatantra Party or by others in connection with respondent No. 1's election was all done with the consent or at any rate under the authority of respondent No. 1, Some support for this contention was tried to be sought from Ex.P.W. 14/5 and Ex.P.W. 42/6. P.W. 14/5 is a letter from respondent No. 1 to Mr. M. P. Birla. It is dated 30-12-1966. In Ex.P.W. 14/5 (the genuineness of this letter is in dispute), respondent No. 1 is shown to have written to Mr. M. P. Birla as follows :

"I have been informed that Morarka was in Gudda constituency yesterday. He was touring with 4 jeeps. Debisinghji and Bhimsinghji have suggested that whenever I go to the constituency, I must also go at least with four jeeps, if not more, to create an impression on the public that I am in no way lacking in vehicles and publicity work against Morarka. S.P.K. also informs me that Morarka has given 5 jeeps to Sumitra, his candidate for Jhunjhunu constituency. The same number of jeeps have been given to his Gudda constituency candidate. He has also told that each candidate can hire further three jeeps for which Morarka will pay the cost. From this you will kindly find that he is all out to win the election. It is also confirmed that in Nawalgard he has given five jeeps to Mintre, who is his candidate. In view of the fact that he is now using more number of vehicles than in the last election we shall also have to fall in line with him, and, therefore all our friends like Debisinghji, Bhimsinghji, Raghuvirsinghji and Madan Singhji, etc. feel strongly that we must also arrange to give at least five jeeps per constituency, if not more."

10. In reply to that letter Mr. M. P. Birla is said to have written Ex. P-42/6. That letter reads as follows :

"I am in receipt of your letter of 30th December from Jaipur regarding more requirements of jeeps. I have checked up with C.A.C.O. and it is not possible for them to arrange any jeeps. Jitendra seems to have given you wrong information. I am however negotiating with C.A.C.O. to give a cash donation for Rajasthan Swatantra Party and the cheque to be sent through you. I will let you know about this within a week.

As regards your further requirement of jeeps, you write that 10/15 jeeps can be delivered immediately by the Rajasthan agent of Mahindra.

If this is so, then you please get these jeeps immediately in the account of our various officers and the finance should be arranged as per our decision in Pilani. Mr. Keshab Mahindra is out of Bombay and therefore I have not been able to contact him, but in any case, as these jeeps are available in Rajasthan for immediate use, I suppose there is no need for me to talk to Mr. Keshab Mahindra.

Durgaprasadji is now reaching Pilani on the 8th or 9th and you please consult him also about our total requirement of jeeps. I agree with you that we should not lag behind Radheshyam Morarka in our efforts. I also understand that he is going to step up his election efforts.

# Yours sincerely, (Sd.) M.P.B. Shri R. K. Birla, Pilani, C. C. Sri D. P. Mandelia,  
Bombay.###

11. While it is true that these letters, if they are genuine, as they are held to be by the Trial Court, do indicate that sometime in December respondent No. 1 was contemplating to secure large number of jeeps to match the number of vehicles used by respondent No. 2. But whether in fact he did so is a matter for proof. But from this letter we are unable to spell out that there was any settled plan for financing the election campaign. Our attention was not invited to any other evidence to show that there was such a plan. As mentioned earlier, no such plea had been taken in the petition. It is no doubt true that it appears from the record that seven jeeps were purchased by some persons who are said to be Birla employees on the 18th and 19th of January, 1967, through one Brijlal Ram Gopal of Jaipur. There is no evidence whatsoever to show that those jeeps were used in connection with the election. Though the surrounding circumstances do indicate that those jeeps might have been purchased through Birla employees for election purpose, those circumstances do not take the case beyond suspicion. In the absence of any proof as to their use we cannot come to any conclusion on the basis of the purchase of those jeeps.

12. Before proceeding to examine the evidence relating to the various items of expenditure said to have been incurred in connection with the election, it is necessary to bear in mind the various principles evolved by this Court to be followed while hearing an election appeal.

13. Taking into consideration the fact that a plea of corrupt practice is somewhat akin to a criminal charge and the further fact that the election cases are tried by experienced judges of the High Court, this Court ordinarily does not go behind the findings of fact reached by the Trial Judge who had the benefit of seeing the witnesses examined before him unless there is something basically wrong in the conclusions reached by him or the procedure adopted by him. This is not a rule of law but a rule of prudence. In *Amar Nath v. Lachman Singh and Others* (Civil Appeal No. 717/68, decided on 23-8-1968) this Court observed :

"We have already observed in more than one decision in the present series of election appeals that in the matter of appreciation of evidence and forming of conclusion with respect thereto, our normal approach would be to accept the findings of the Trial Judge and not to upset the same unless it was shown to us that the Trial Judge had not considered all the evidence in its proper perspective or that his inferences were not supported by the data relied on. We propose to follow the said rule in disposing of this appeal. We must also bear in mind that the charge of commission of a corrupt practice has to be proved by cogent and reliable evidence beyond any reasonable doubt and that such a charge cannot be established by any consideration of preponderance of probabilities."

14. While making these observations the learned judges relied on the decision of this Court in the case of *Jagdev Singh v. Pratap Singh* ((1964) 6 SCR 750 : AIR 1965 SC 183).

In the present appeal we do not propose to go into the question whether the evidence adduced by a

petitioner in an election case should establish the case beyond any reasonable doubt but suffice it to say that that evidence must be cogent and conclusive. It is true that as observed in *Dr. M. Chenna Reddy v. V. Ramchandra Rao and Another* (Civil Appeal No. 1449/68, decided on 17-12-1968) that a charge of corrupt practice cannot be equated to a criminal charge in all respects. While the accused in a criminal case can refuse to plead and decline to adduce evidence on his behalf and yet ask the prosecution to prove its case beyond reasonable doubt such is not the position in an election petition. But the fact remains that burden of proving the commission of corrupt practice pleaded is on the petitioner and he has to discharge that burden satisfactorily. In doing so he cannot depend on preponderance of probabilities. Courts do not set at naught the apparent verdict of the electorate except on good grounds.

15. Now coming to the corrupt practice of incurring expenditure beyond the prescribed limit, in several decisions this Court has ruled that it is not sufficient for the petitioner to prove merely that the expenditure more than the prescribed limit had been incurred in connection with the election, he must go further and prove that the excess expenditure was incurred with the consent or under the authority of the returned candidate or his election agent. In *Rananjaya Singh v. Baijnath Singh and Others* ((1955) 1 SCR 671) this Court had to consider a case where a proprietor of an estate lent the services of his Manager, Assistant Manager, 20 Ziladars and their peons for canvassing on behalf of his son. It was proved that the father was an old man and the returned candidate was helping his father in the management of his estate. The question in that case was whether because of the canvassing by those persons the returned candidate had committed the corrupt practice of engaging the services of more than the prescribed number of persons and further whether the salary and wages paid to them should have been included in computing the expenses incurred by the returned candidate. In that case there was no evidence to show that the services of those persons were either procured that their services were obtained with the consent or under the authority of the returned candidate or his election agent.

This is what this Court observed in that case :

"There can be no doubt that in the eye of the law these extra persons were in the employment of the father of the appellant and paid by the father and they were neither employed nor paid by the appellant. The case, therefore, does not fall within Section 123(7) at all and if that be so it cannot come within Section 124(4). It obviously was a case where a father assisted the son in the matter of the election. These persons were the employees of the father and paid by him for working in the estate. At the request of the father they assisted the son in connection with the election which strictly speaking they were not obliged to do. Was the position in law at all different from the position that the father had given these employees a holiday on full pay and they voluntarily rendered assistance to the appellant in connection with his election. We think not. It is clear to us that qua the appellant these persons were neither employed nor paid by him. So far as the appellant was concerned they were mere volunteers and the learned advocate for the respondent admits that employment of volunteers does not bring the candidate within the mischief of the definition of corrupt practices as given in Section 123(7). The learned advocate, however, contended that such a construction would be against the spirit of the election laws in that candidates who have rich friends or relations would have an unfair advantage over a poor rival. The spirit of the law may well be an elusive and unsafe guide and the supposed spirit can certainly not be given affect to in opposition to the plain language of the sections of the Act and the rules made thereunder. If all

that can be said of these statutory provisions is that construed according to the ordinary, grammatical and natural meaning of their language, they work injustice by placing the poorer candidates at a disadvantage the appeal must be to Parliament and not to this Court."

16. The same view was reiterated in *Ram Dayal v. Brijraj Singh and Others.* ((1969) (2) SCC 218 : (1970) 1 : SCR 530 : AIR 1970 SC 110) Therein this Court ruled that unless it is established that expenditure was incurred in connection with the election by the candidate or his election agent or was authorised by them, it is not necessary to be included under Section 77 of the Act. Expenses incurred by any other agent or person without anything more need not be included in the account or return as such incurring of expenditure would be purely voluntary.

17. In *Mubarak Mazdoor v. Lal Bahadur*, (20 ELR 176) the Allahabad High Court held that the expenditure voluntarily incurred by the friends and supporters of the returned candidate does not come within Section 123(3) even though the returned candidate was aware of the fact at the time of the election itself that his friends and sympathisers were incurring expenditure in connection with his election. That is also the effect of the decision in *Rananjaya Singh's case* (supra). This Court as well as the High Courts have taken the view that the expenses incurred by a political party to advance the prospects of the candidates put up by it, without more, do not fall within Section 77. That position in law was not disputed before us. But it is true as observed by the Bombay High Court in *Shivram Sawant Bhonsale v. Pratap Rao Deorao Bhonsale*; (17 ELR 37) that if the Court comes to the conclusion that an item of expenditure has been suppressed in the return of election expenses, the mere fact that there is no sufficient evidence about the amount that must have been spent is no ground for ignoring the matter. It is the duty of the court to assess all expenses as best it can and though the Court should not enter into the region of speculation or merely try to guess the amount that must have been spent, it would generally be possible to arrive at an amount of expenditure on a conservative basis and where it is possible to arrive at any such estimated amount should be held as not shown by the candidate in his election account.

A somewhat similar was the view taken by this Court in *Amar Nath's case* (supra).

18. We shall now proceed to examine the evidence adduced in this case on the basis of the principles enunciated earlier. But before going to the evidence relating to the expenditure said to have been incurred by the 1st respondent in connection with his election, it is necessary to refer to a curious feature in this case. In the course of the trial of the case two files (files A and B) containing numerous documents were produced on behalf of the petitioner. One of those files, viz. file 'A' was produced by P.W. 14 Mr. Nathuramka and the other was produced by Mr. Chandershekhar, a member of Parliament through Mr. Sanghi, an Advocate. That file is file 'B'. These files are said to contain the correspondence relating to the election of respondent No. 1 exchanged between various persons, such as respondent No. 1, Mr. M. P. Birla, Mr. S. P. Kaithan, Mr. K. K. Birla, Mr. Makahria, etc. Mr. Chandershekhar has not appeared in the witness box. Mr. Sanghi did not give evidence in the case. It is not known how Mr. Chandershekhar came to possess those documents. Now coming to file 'A', the story put forward by P.W. 14 is that he is a business man in Bombay; he was a friend of Mr. M. P. Birla and at his instance he worked for respondent No. 1 during the election; after the election respondent No. 1 fearing that there might be a raid on his residences in connection with the evasion of taxes or duties, handed over that file to him for safe keeping. The Trial Court has come to the conclusion that in that file there is not a single document relating to any business transaction. All the documents therein pertain to the election of respondent No. 1 and there could have been no fear of seizure of those documents. The story put forward by P.W. 14 is on the

face of it unbelievable. It is most likely that P.W. 14 worked for Mr. Morarka during the election as suggested during his cross-examination. He seems to be a hired witness. But the fact that a document was procured by improper or even illegal means will not be a bar to its admissibility if it is relevant and its genuineness proved. But while examining the proof given as to its genuineness the circumstances under which it came to be produced into Court have to be taken into consideration. Evidence has been adduced to prove some of the documents found in files 'A' and 'B' but the Trial Court has rejected that evidence excepting in regard to a few of the documents. It has given good reasons in support of its conclusion. The persons who tried to prove the signatures found on some of those documents are strangers to those who signed them. Their pretention as to their knowledge about the signatures of the concerned person was proved to be hollow. The principal witness who sought to prove several of the documents contained in files 'A' and 'B' is P.W. 33, Mr. Shankerlal Roopakdas. He is a thoroughly unreliable witness. He appears to be a dismissed employee of one of the Birla concerns. His pretention that he worked for respondent No. 1 during the election appears to be false. It is established that he was one of the counting agents of Mr. Morarka. No application was made to this Court to admit any document as additional evidence in the case. Therefore in this appeal we are only concerned with those documents which were admitted in evidence by the Trial Court. As found by the Trial Court voluminous false evidence has been adduced in this case both on behalf of the petitioner as well as on behalf of respondent No. 1. Several of the answers given by respondent No. 1 during his cross-examination were not found to be true by the Trial Court. From an over-all review of the material on record, we are left with an uneasy feeling about the evidence adduced in the case. We have no doubt in our mind that in the Jhunjhunu Parliamentary constituency during the last General Election enormous expenses had been incurred in support of the candidature of respondent No. 1. We do not know whether the same was true of Mr. Morarka though Ex.P. W. 14/5 indicates such a possibility. In the election petition, the petitioner sought not only to get set aside the election of respondent No. 1, he went further and claimed the seat for Mr. Morarka. Mr. Morarka in his written statement supported the pleas taken by the petitioner. Thereafter, respondent No. 1 gave notice of filing recrimination against Mr. Morarka. Immediately thereafter Mr. Morarka withdrew his claim for seat and contended that the petitioner could not claim the seat for him. Hence the second relief asked for by the petitioner in his petition was ordered to be dropped. This change in the front is not without significance.

19. This takes us to the expenses said to have been incurred by respondent No. 1 in connection with his election under the various heads.

We shall now take up the expenses said to have been incurred by respondent No. 1 under various heads (only such of them as are pressed before us).

20. As seen earlier the petitioner's allegation in the petition was that respondent No. 1 incurred an expense of about six lakhs of rupees for purchasing petrol and mobiloil in connection with his election. In his election return respondent has shown an expense of only Rs. 5,466.89 P. under that head. Though the petitioner alleged in his petition that respondent No. 1 had incurred an expense of about 6 lakhs for purchase of petrol and mobiloil, evidence was led only about three payments in that regard, viz. (1) a sum of Rs. 2,000/- to the proprietor of Arjundeo Dharmal of Caltex and (2) a sum of Rs. 5,000/- and another sum of Rs. 5,700/- to Messrs. Gangaram Jamnadar of Burmah Shell. No person connected with any of these pumps was examined in support of the alleged payments. The account books of those firms were also not got produced. To prove the payment of sum of Rs. 2,000/- to Arjundeo Dharmal of Caltex, one Mr. Radha Kishan (P.W. 10) was examined. His case is that he is a friend of the son of the proprietor of the firm Messrs. Arjundeo Dharmal and he chanced to be present at the pump when one "B. S. Choudhary of Birlas" came and paid to

Arjundeo Rs. 2,000/-. Later on he was told by the proprietor of the firm that it was in connection with the supply of petrol and oil to respondent No. 1. The learned Trial Judge was unable to place reliance on this chance witness. His evidence is highly artificial. No satisfactory explanation is forthcoming for not examining the proprietor of the firm in question. Now coming to the payment of a sum of Rs. 5,000/-, the only witness who speaks about it is P.W. 19, Vasudev. His evidence for good reasons has been disbelieved by the learned Trial Judge. He is clearly a partisan witness. For the alleged payment of Rs. 5,700/- on January 28, 1967, the witness examined is P.W. 21. The learned Trial Judge has disbelieved this witness as well. We see no reason to differ from the assessment of the evidence made by the learned Trial Judge. According to P.W.s 19 and 21 they chanced to be present at the time when payments in question were made through some third parties. Here again neither anyone connected with the firm was examined nor the firm's accounts were produced.

21. It was alleged in the election petition that respondent No. 1 had spent about 2 lakhs of rupees on printing of posters, pamphlets, leaflets and cartoons and the preparation of badges of the election symbol "Star", rubber balloons with the slogans "vote for Birla" and flags of silk and cotton clothes and their distribution as also on wall paintings. Before us no arguments were advanced as regards the expenditure said to have been incurred for badges of election symbol, rubber balloons and flags. It was urged before us that respondent No. 1 had paid a sum of Rs. 22,000/- to Messrs. Rai Bros. of Bhiwani for wall painting. Several witnesses spoke to the fact that the Jhunjhunu constituency was flooded with wall paintings seeking vote for respondent No. 1. But strangely enough no one connected with Rai Bros. was examined in the case. The proprietor of Rai Bros. was summoned to give evidence in the case but he did not appear in court. On the other hand one Mr. Ganesh Dutt appeared in Court and presented a petition alleging that respondent No. 1's election agent is not allowing the proprietor of Rai Bros., Mr. Ganpat Rai Joshi to appear in Court and therefore Mr. Joshi had asked him to produce the account-books of that firm in court. Neither Mr. Ganesh Dutt was examined in the case nor the account-books otherwise proved. The allegation made by Mr. Ganesh Dutt that the election agent of respondent No. 1 did not permit Mr. Joshi to appear in Court remains unproved. The resulting position is that there is no evidence to show that any amount was paid to Mr. Joshi either by respondent No. 1 or his election agent or someone with his consent or under his authority. Similarly there is no satisfactory evidence about any excess expenditure incurred by respondent No. 1 in publishing pamphlets, leaflets and handbills though as many as 56 different types of pamphlets appeared to have been distributed during the election soliciting votes either for respondent No. 1 or for the Swatantra Party. There is no evidence as to who issued those pamphlets. As seen earlier, respondent No. 1 had the powerful support of the members of the Birla family as well as of some other industrialists. Evidence was adduced to show that 76,000 copies of a cartoon-two starved out and emaciated bullocks evidently depicting that Congress rule has brought in nothing but poverty-were got printed by one Mr. Saxena, an Executive in a Birla concern at the Hindustan Times Press at Delhi for which he had paid Rs. 2,300/- as charges. There is no evidence to show that these cartoons were got printed by respondent No. 1 nor is there any evidence to show that they were got printed by Mr. Saxena with the consent of respondent No. 1 or under his authority. It may be that they were got printed to aid the election campaign of respondent No. 1 though these cartoons could have been used in any constituency in India. Mr. Saxena has not been examined as a witness in the case.

22. The fact that this cartoon was widely published in the constituency as is clear from the evidence adduced in the case without more cannot show that the expenditure for getting those cartoons printed was incurred by respondent No. 1.

23. Evidence was led to show that at about the time of the election, several telephones installed in the residences of some of the members of the Birla family and some of their executives were extensively used and the telephone charges ran into few thousands of rupees but there is no evidence to show that either those telephones were used in connection with the election or they were used at the instance or under the authority of respondent No. 1.

24. Evidence was also adduced to show that a large number of jeeps and cars were used in connection with the election. No evidence was adduced to show that they were either used by respondent No. 1 or that they were used with his consent or under his authority. In the circumstances of this case, the possibility of his friends using them on their own cannot be ruled out. As seen earlier several jeeps were purchased through one of the business associates of Birlas at about the time of the election but here again as mentioned earlier there is no evidence to show that those jeeps were used in Jhunjhunu constituency at the time of the election.

25. Evidence was led to show that thousands of persons worked for respondent No. 1 but there is nothing to show that they did not work voluntarily. At any rate there is no evidence to show that they were either paid for or at least their expenses were met by respondent No. 1. It was said that respondent No. 1 ran several messes to feed his workers as well as the voters. The Trial Court has found that the evidence relating to that aspect of the case is unreliable. We see no reason to arrive at a different conclusion.

26. Evidence was led to show that considerable expenses were incurred for arranging meetings. Here again there is no reliable evidence to show the amounts that were likely to have been spent for arranging the meetings or even to connect respondent No. 1 with the expenditure incurred in connection with those meetings.

27. Though the petitioner has failed to establish that any of the items of expenditure alleged to have been incurred by respondent No. 1 has in fact been incurred by him, there is voluminous and fairly convincing evidence to show that the constituency was flooded with election literature including posters, cartoons, paintings of the walls, leaflets, handbills, etc., on behalf of respondent No. 1. There is also evidence to show that large number of vehicles were used in connection with the election. It is clear from the evidence on record that money was freely and liberally spent to further the prospects of respondent No. 1. In addition to this there is also evidence to show that in about December, 1966, an account was opened in the Pilani branch of the United Commercial Bank in the name of P.W. 32, Mr. Raghuvir Singh who was at the time the President of Jhunjhunu District Swatantra Party. On the very day of the opening of the account a cheque for Rs. 1,50,000/- issued by C.A.C.O. (Cement Allocation and Co-ordination Organization) was credited. Thereafter cash deposits of over 2 lakhs of rupees were made in that account. These monies were drawn by P.W. 32 mostly by issuing cheques in favour of Mr. Tibriwalla, one of the Birla Executives. According to P.W. 32, the contribution made by C.A.C.O. was made to the Swatantra Party and the cash deposits made were the amounts collected by him for the benefit of the Swatantra Party and that he spent the amount received in connection with the election of the Swatantra Party candidates in the Jhunjhunu constituency. P.W. 32 is undoubtedly an interested witness. He was a supporter of respondent No. 1. He himself contested one of the assembly constituencies in the Jhunjhunu Parliamentary constituency. In the 1962 General Election, he opposed his cross-examination (the Court permitted the counsel for the petitioner to cross-examine him) much reliance cannot be placed on his evidence. Counsel for the appellant asked us to hold that the account in the name of P.W. 32 was in reality the account of respondent No. 1; P.W. 32 lent his name as a cover. In fact it was Mr. Tibriwalla who withdrew the amounts from that account and utilized the same in connection with

the election of respondent No. 1. In support of this contention he relied on the following circumstances :-

28. The money was paid by C.A.C.O., a concern in which Birlas were interested. In Ex.P.W. 42/6, Mr. M. P. Birla had written to respondent No. 1 to say that he would persuade C.A.C.O. to make some contribution to Swatantra Party and further the cheque could be sent through respondent No. 1 and cheques were mostly issued in favour of Mr. Tibriwalla. We agree with the learned Judge of the High Court that there is room to suspect spent to further the election prospects of respondent No. 1. C.A.C.O. is not a Birla concern. It is an organization formed by several cement manufacturers. Birlas are only one of them. There is no evidence to show that the cheque in question was sent through respondent No. 1. It is proved that C.A.C.O. had contributed in connection with the election not only to the Swatantra Party but also to the Congress Party, the Jan Sangh and several other splinter groups. It has even given contributions to individual candidates as is seen from its accounts. In fact the contribution given by C.A.C.O. to the Congress Party is much larger than made by it to the Swatantra Party. Mr. Tibriwalla was a member of the Swatantra Party. From the facts proved it is not possible to come to a definite conclusions that he acted on behalf of respondent No. 1. If one looks at the way C.A.C.O. was distributing amounts during the election as donations, one is constrained to feel that those payments were intended as investments. Possibly C.A.C.O. did what other business concerns are doing. Such donations to political parties whether done in the crude way in which C.A.C.O. did or in a more subtle way would undermine the very foundation of our society. No democracy can survive, however ideal is the Constitution by which it is governed, if the principles underlying the Constitution are ignored. The best democratic Constitution can go the way the Weimar Constitution went.

29. It is true that many times corrupt practices at election may not be able to be established by direct evidence and the commission of those corrupt practices may have to be inferred from the proved facts and circumstances but the circumstances proved must reasonably establish that the alleged corrupt practice was committed by the returned candidate or his election agent. As mentioned earlier preponderance of probabilities is not sufficient.

30. For the reasons mentioned above this appeal must fail and it is hereby dismissed. But we cannot leave this appeal without expressing our uneasiness about the law relating to election expenses. Section 123 (6) is by and large ineffective in controlling election expenses. There are ways to bypass that provision. From that we have seen in the various election cases that came before us we re of the opinion that law controlling expenses has been reduced to a mockery. We can only repeat the observation of this Court in Ranajaya Singh's case (supra) that "the appeal in this connection must be to the Parliament".

31. Now coming to the question of costs, the Trial Court felt extremely unhappy in having had to award costs to respondent No. 1. But it had to because of the compulsion of the law-see Section 119 of the Act. We are not faced with any such compulsion. There is no provision in the Act which compels the appellate court to award costs to the successful party in an election appeal. This is eminently a fit case where we should not award costs to the returned candidate. The resulting position is that the appeal is dismissed but the parties are directed to bear their own costs in this appeal.

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