

B. R. Rao

Vs

N. G. Ranga

Civil Appeal No. 1486 of 1968

(J. C. Shah, A. N. Grover JJ)

16.10.1970

JUDGMENT

SHAH, J. -

1. At a bye-election held in April, 1967, to elect a member of the Lok Sabha from the Srikakulam Parliamentary Constituency there were two contesting candidates - Boddepalli Rajagopala Rao - hereinafter called "the appellant" - and N. G. Ranga - hereinafter called "the respondent". The respondent was declared elected. The appellant filed an application in the High court of Andhra Pradesh to set aside the election of the respondent on the ground that the respondent had committed diverse corrupt practices described in Section 123(1)A(a), (b), (5) and (6) of the Representation of the people Act, 1951. The respondent denied the allegations made in the petition. He also submitted that the allegations were vague and indefinite and some of those allegations did not constitute any corrupt practice within the meaning of the Representation of the People Act, 1951. The appellant amended the petition and submitted particulars of certain corrupt practices set out in the original petition. The appellant then filed his additional written statement. The High Court held on a detailed consideration of the evidence that the corrupt practices alleged by the appellant in the petition were not proved and dismissed the petition. The appellant has appealed to this court under Section 116-A of the Representation of the people Act, 1951.

2. Counsel for the appellant restricted his argument to the following charges set out in the petition :

(1) A charge of bribery in respect of an amount of Rs. 4,000/- paid to a candidate in the election as gratification for not standing for election, Rs. 10,000/ for constructing a high school building in the village Kothakotha with the object of inducing the voters in the village and three other contiguous polling stations to vote for him; and Rs. 1,000/ paid for completing the excavation of a well in consideration of promise of votes for the respondent. Thereby corrupt practices of bribery within the meaning of Section 123(A) and (IB) were committed;

(2) Providing on the day of polling a number of motor-vehicles for the free transport of votes to the polling stations and especially motor-jeep No. APK 9486, motor-lorry No. APK 9250, motor-lorry No. APG-3511 and motor-bus No. APS 1315. Thereby a corrupt practice under Section 123(5) was committed;

(3) Causing the printing and publication of a leaflet containing false and defamatory statements in relation to the personal charter of the appellant. Copies of the leaflet were distributed at several meetings held by the Swatantra Party at Srikakulam and

other places. The respondent and his election agent also exhorted, with the object of tarnishing the image of the appellant and lowering him in the estimation of the voters, the voters at those meetings not to vote for the appellant who it was alleged had misappropriated public funds. Thereby the respondent committed a corrupt practice under Section 123(4) of the Representation of the People Act.

(4) That the account of the expenditure returned by the respondent did not disclose many items of expenditure which were incurred in connection with the election. The respondent had expended a sum exceeding Rs. 3 lakhs and the expenditure return was a gross under-estimate of the expenses incurred by the respondent in connection with his election. Thereby he committed a corrupt practice under Section 123(6), read with Section 77 of the Representation of the People Act, 1951.

In respect of the charge of bribery there were three heads :

(i) that the respondent and his election agent G. Latchanna induced one Suvari Sanyasi Apparao not to stand as a candidate at the election by paying him Rs. 4,000/- as gratification. According to the appellant Suvari Sanyasi Apparao who was defeated in the contest for a seat in the Legislative Assembly of Andhra Pradesh in the general elections held in 1962 and February, 1967, intended to contest for the Lok Sabha seat in the bye-election and was canvassing support before the appointed date for filling nominations, but the respondent and his election agent at a meeting on March 29, 1967, in the travellers' bungalow at Amadalavalasa dissuaded Suvari Sanyasi Apparao from contesting the election in consideration of payment of Rs. 4,000/-. This was denied by the respondent. In support of his case the appellant examined Suvari Sanyasi Apparao P.W. 24 and B. Suryanarayana, P.W. 25. He relied also upon two documents Exts. P-41 and P-83. In rebuttal the respondent relied upon his own testimony of his election agent Latchanna. Suvari Sanyasi Apparao was also examined as a witness R.W. 2 The respondent examined a number of other witnesses K. Chalapatirao Patnaik R.W.1, Bendi Appalla Suri, R.W. 3, Dola Jagannatha Rao, R.W. 6, Sylada Pyditalli Naidu, R.W. 9, B. Achuta Raju, R.W. 10, B. Narayan Swamy, R.W. 15, Kolaganti Sathi Raju, R.W. 25 and Gokina Chandra Rao, R. W.26 and relied upon certain documents. The two witnesses examined on behalf of the appellant deposed to the circumstances leading to their presence at Amadalavalasa travellers' bungalow and payment of Rs. 4,000 /- to Suvari Sanyasi Apparao By Latchanna after the respondent and Latchanna had requested him not to file the nomination paper and to help the respondent in the election. The learned Trial Judge made a detailed analysis of the evidence and held that there were "contradictions and material discrepancies" in the statements of the witnesses for the appellant, and that the statements of the witnesses "did not inspire confidence". The burden of proving that the respondent and his election agent went to Amadalavalasa travellers' bungalow and persuaded Suvari Sanyasi Apparao not to file his nomination paper in consideration of receiving a bribe lay upon the appellant. The two witnesses examined on his behalf are, as found by the High Court, "highly interested and their testimony was rebutted by the witnesses named by him as the persons present at the time". Besides, the evidence of the witnesses as found by the High Court "was discrepant and did not accord with probabilities". Both the oral and documentary evidence falsified it. "There were inherent improbabilities in the allegation itself". No substantial argument was advanced before us to persuade us to take a different view.

(ii) In respect of the charge of bribery of Rs. 10,000/-, it was alleged in the petition that Latchanna, election agent of the respondent, visited Kothakota at 8.00 p.m. on April 26, 1967, and paid Rs. 10,000/- to one D. Jaganatha Rao a resident of that village for constructing a 'High School building' in that village. The payment, it was said, was made with the object of inducing the voters of Kothakota and three contiguous polling stations to vote for the respondent. This was denied by the respondent. In support of the allegation the appellant examined Dhavala Appalla Suri, P.W. 7, Kusumanchi Adinarayana, P.W. 8, Galala Ramulu, P.W. 9, and Amballa Appalla Suri, P.W. 11, and relied upon some documentary evidence also. In answer the respondent examined himself, his election agent and witnesses K. Chalapatirao Patnaik, R.W. 1, Dola Jagannatha Rao, R.W. 6, D. Kondaih Choudari, R.W. 8, and Alla Venkatarao, R.W. 16 and relied upon certain documentary evidence. On a consideration of the evidence the learned Judge observed that the entire oral evidence in support of the appellant's case was 'highly discrepant' and did not 'merit credence'. The High Court observed that "the petition did not refer to the place of incident, whether it was rice mill premises or outside the rice mill where the payment is alleged to have been made. While some of the witnesses said it was rice mill premises itself, others said that it was near the rice mill". The High Court also observed that "apart from the interested nature and the fact that their testimony was replete with material contradictions, there were inherent improbabilities in the story told, which made it highly difficult to accept the testimony". After considering the testimony of the respondent and his witnesses the Court observed that the oral testimony on behalf of the appellant was inconsistent and did not make out a case of corrupt practice, that the probabilities of the case were strongly against the appellant's contention and there was no reason to disbelieve the testimony of the witnesses for the respondent. Even in respect of this charge of corrupt practice no argument seeking to persuade us to take a different view was advanced by counsel for the appellant.

(iii) In respect of the third head of the charge of bribery, it was alleged by the appellant in his petition that at Pathokota a village falling within the limits of Budarsingi polling station the respondent and his election agent convened an election meeting on April 23, 1967, that the villagers assembled at the meeting requested the respondent to donate a sum of Rs. 1,000/- to complete the "excavation of a well" in return for their votes, and that as directed by the respondent on the same day at about 5.00 p.m. Negineni Venkayya agent of the respondent paid Rs. 1,000/- to Biridhar and Judisti, members of the village Youth League in the presence of the Sarpanch and village elders. In support of this plea the appellant examined Khanda Judishtra Kumaro, P.W. 17, and Chinchalam Satyanarayana, P.W. 18. In rebuttal, the respondent examined himself, his election agent Latchanna, Kavuri Venkaiah, R.W. 28, Giridhar Kumar, R.W. 13, of village Pathokota and two others of the same village Harinarayna Dolao, R.W. 17, and Hansing Mumarao, R.W. 18. On a consideration of the evidence, the Court held that the evidence on behalf of the appellant was "marred by improbabilities", and it could not be accepted. Again the evidence for the respondent in the view of the High Court was "sufficient to disprove the corrupt practice" alleged. The High Court held that the corrupt practice was accordingly not established even in respect of this head of charge. Counsel did not urge any substantial argument to persuade us to take a different view.

3. The charge of corrupt practice under Section 123(5) arose out of the allegation that Latchanna procured number of lorries, jeeps, motor-cars, buses and other vehicles, for free transport of voters to the polling stations on the date of polling. It was averred in the petition that jeep No. APK-9486 was used for the free transport of voters between 10.00 a.m. and 2.00 p.m. on the polling day from Killoi village and Killoi Colony to the polling station at Konkadapatti. The jeep, it was said, carried the Swatantra Party Flag as well as the agent of the respondent one Dunkuru Mangule. This was witnessed by the Presiding Officer, among others, when a complaint was made by the agent of the appellant Hadia Naiko to the Presiding Officer. In support of this plea of corrupt practice the appellant examined three witnesses, Papi Naidu, Presiding Officer, P.W. 10, Hadia Naiko, P.W. 20, and D. Ramamurty P.W. 26. The respondent denied that the jeep APK-9486 was used for transporting voters as alleged. According to him the vehicle belonged to the Swatantra Party and stood registered in the name of Narayan Dandekar, Secretary of the Party.

4. D. Ramamurty, P.W. 26, was examined on behalf of the appellant in support of his case on this plea of corrupt practice. The witness said that the jeep was entrusted to him at Sompeta to deliver it to Dunkuru Mungalo, polling agent of the respondent at Konkadaputti. According to the witness it was jeep No. APK-9486 which Latchanna had brought from "Guntur side for purposes of election", that the jeep was delivered to the polling agent for bring voters from neighbouring villages to the polling booths, that the jeep was used for that purpose from 10 a.m. to 2 p.m. and that he reached Konkadaputti at 9.30 a.m. and remained near the polling station till 2 p.m. asking voters to vote for the "Star Symbol" of the Swatantra party. The learned Judge observed that the witness "did not impress him as a witness of truth and it was impossible to place reliance upon this testimony". His story that the voters were transported free of charge in the jeep to the polling station on the date of polling could not therefore be believed.

5. Papi Naidu, the Presiding Officer, stated that a complaint was lodged by the agent of the appellant that the voters were being brought by the supporters of the Swatantra Party to the polling station. The witness also stated that he saw voters getting down the jeep and joining the queue and that there were 7 or 9 such voters. But the witness admitted that the people who were getting down the jeep were not known to him, that he had no opportunity to get them identified, that they had joined the queue but whether they were voters or not he could not say, that he asked the agent to put his complaint in writing but that was not done, and that the agent was not known to him and he had never seen him afterwards. The witness did not mention this incident in the report "as such complaints were not usually mentioned at all". He did not give the number of the jeep, nor did he state that he had seen the Swatantra flag on the jeep. He could not vouch for the fact that those who alighted were voters or that they had voted at that polling station. In the view of the learned Judge the testimony of Papi Naidu, P.W. 10, did not satisfy "all the component elements of the corrupt practice alleged."

6. Nadia Naiko was the polling agent of the appellant. He stated that Dunkuru Mongalo was bringing voters from Killoi colony and Killoi village between 10 a.m. and 2 p.m. and on seeking this he told Dunkuro Mungalo that it was not proper for him to bring the voters in jeep cars and when the latter asserted that he had right to do so, he complained "to the Presiding Officer who asked for a written complaint which he could not comply with as he was not proficient enough to write one and none on behalf of the appellant had come who could do the needful". The witness did not give the number of the jeep nor the names of the voters. In the view of the learned Judge the "procurement of the jeep for free conveyance was not proved". The High Court observed that it was unnecessary to discuss the evidence on behalf of the respondent for the appellant had failed to establish the corrupt practice alleged.

7. The next head under this charge of corrupt practice as alleged by the appellant related to the use of motor-lorry No. APK 9250 which was flying the Swtantra Party flag and was used for free transport of votes on the polling day between 10 a.m. and 4 p.m. from the surrounding villages to the polling station at Guttavalli. During one of the trips, it was said that there ensued a free fight between the persons who were carried by the lorry and others who were present near the polling station as the former raised slogans acclaiming the respondent and denouncing the appellant. A complaint was given to the police by some of the voters that they were being conveyed in the lorry, two of those voters being Kotta Appanna and Sarpanch Sinupanapalaum. It was admitted therein that while they were being transported for exercising their vote for the respondent there was obstruction from the supporters of the appellant Sanapalli Hanumula Appalaw and his son and that a free fight ensued. The respondent denied these allegations. In support of the allegations, the appellant examined Kolla Appanna, P.W. 12, Gedala Lakshmi Naidu, P.W. 16, Sanapala Narsinha Rao, P.W. 21, Sanapali Raja Rao, P.W. 24, and P. Chandra Rao, P.W. 27. In rebuttal, the respondent examined Jamma Jogi, R.W. 7, Garimella Kameswara Rao, R.W. 11, and Dannana Appanna, R.W. 23, and relied upon "the first information"; which was lodged about the fight. The High Court analysed the evidence of the witnesses on behalf of the appellant. In regard to the testimony of Kolla Appanna, P.W. 12, the High Court observed that his assertion that he went in a lorry was "highly doubtful" and that the story deposed to by the witness was "palpably false", that the story that the witness Gedala Lakshmi Naidu, P.W. 16, that he travelled by the lorry was "open to doubt", that testimony of Ganapala Narsinha Rao who is "closely related" to the appellant "was tainted", and that the evidence of Sanapali Raja Rao, P.W. 24, was also "not believable". On a review of the evidence the High Court observed that the number of the lorry was not given by any of the witnesses, and there was no evidence about its ownership. There was again no evidence "as to its procurement for free conveyance" and "the alleged use of the vehicle for free conveyance was, therefore, not established. Thus the contention as to the alleged incident must be held against the appellant".

8. The third branch under this head related to the use of motor-lorry No. APG 3911 and motor bus No. APS 1315. It was alleged in the petition that the two vehicles were "flying the Swatantra party Flag" and were used for transporting voters free of charge on the polling day to Torrivanan polling station from Buruinwada and Appanyaturu that a report was lodged by Boyana Kanakiah and B. Mamaray to the police Sub-Inspector of Kothun who was on election duty at Sarnakota stating that a number of voters were being carried by lorry No. APG 3911 and bus No. APS 1315 to vote for the respondent, that the Sub-Inspector prepared the statement of the bus conductor, the lorry driver and other persons and that a mediation report was also recorded in that connection. The respondent denied the allegations. In his additional written statement he also pleaded that there was absence of essential particulars relating to the names of the voters and that the petition did disclose a cause of action since the allegations did not make out a corrupt practice. In support of his case the appellant relied upon his own evidence and the evidence of the witnesses Boyana Kanakiah, P.W. 13, and Boyina Kama Raju, P.W. 14. It was the case of the appellant that those witnesses had seen the incident and had given a report promptly to the Sub-Inspector of Police, and that Sub-Inspector had detained the lorry and bus and got a mediators' report prepared. But the Sub-Inspector of Police to whom the report is alleged to have been made was (though cited as a witness) not examined in the case and the report or the proceeding started pursuant thereto were not brought on the record. After the evidence was closed the appellant applied for calling the Sub-Inspector as a Court witness but the application was rejected. Boyana Kanakiah, P.W. 13. and Boyina Kama Raju, P.W. 14, are cousins of the appellant. In their evidence they did not specify the persons who used the said lorry and bus on behalf of the respondent, nor did their evidence disclose the names of the voters

conveyed by the said lorry or bus.

9. In the view of the High Court the conditions of a corrupt practice falling within the meaning of Section 123(5) of the Representation of the People Act were not established. The High Court pointed out that even if it be held that what Boyana Kanakiah, P.W. 13, and Boyina Kama Raju, P.W. 14, said that certain persons travelled by the lorry and bus was true unless it was established that the voters were taken to and from the polling stations at the instance of the respondent, no charge of corrupt practice can be deemed to be made out for not a single person was named and no person was brought before the Court to prove that he had travelled in the bus or the lorry. The High Court held that the case set up in respect of the two vehicles was also not established.

10. The finding of the learned Trial Judge is based upon appreciation of evidence of the witnesses in the light of probabilities. A charge of corrupt practice under Representation of the People Act must be established by clear and cogent evidence. When the Court of first instance on a consideration of the evidence of the witnesses has refused to place any reliance upon their testimony the burden lying upon the party setting up a plea of corrupt practice becomes no lighter in appeal. The charge cannot be held established merely upon suspicion, or preponderance probabilities. Unless the appellant establishes that the appreciation of evidence was vitiated by gross misreading or misconception of the evidence or because of failure to consider important pieces of evidence which had a bearing on the charge or because of serious irregularities in procedure which amount to a denial of a fair trial the appellate court will not proceed to reappraise the evidence on which the findings are recorded by the Court of first instance on the credibility of witnesses.

11. The third head of charge relates to the printing and publication of a leaflet defamatory of the appellant and falling within Section 123(4) of the Act. It was stated in the petition that one Dola Jagannatha Rao, agent of the respondent, caused the printing and publication at the instance of the election agent of the respondent of a leaflet containing the following false and defamatory statements in relation to the personal character of the appellant :

(a) that the appellant misappropriated large amounts to the tune of about Rs. 50 lakhs belonging to the Co-operative Sugar Factory and the Co-operative Central bank for his own ends :

(b) that the Supreme Court confirmed the order of the High Court sentencing the appellant for contempt of Court. The leaflet posed the question whether the Congress Party could not get a candidate with better character and record of selfless public service ?

The appellant said that the leaflet was printed at Sri Ramakrishna Printing Works at Srikakulam and the printing expenses thereof amounting to Rs. 85/- were according to the appellant defrayed by the election agent of the respondent, that the election agent of the respondent caused the distribution of those leaflets at several meetings held by the Swatantra Party at Srikakulam at 9-00 p.m. on April 24, 1967, at Mandasa at 6.00 p.m. on April 21, 1967, at Takkali at 7-00 p.m. on April 20, 1967 and at Palasa at 11-00 a.m. on April 21, 1967 and at other places to sponsor the candidature of the respondent to a seat in the Parliament. It was further averred that the respondent and his election agent exhorted the people at those meeting not to vote for a person who had misappropriated public funds. The respondent denied that he and his election agent had knowledge or had consented to, or were concerned with the leaflet, its printing, publishing and distribution. He also denied that he or his election agent exhorted the voters as alleged by the appellant.

12. The leaflet in question is in the form of several interrogations. The caption of the leaflet is "Peoples' Questionnaire to the respected Minister". The relevant part of the leaflet is :

"1. Did not 18 gentlemen including Andhra Pradesh Congress Secretary Srikuklapu Lokshammanna Das, District Board President Sri Gorie Sri Iramulu Naidu, Ex-Assembly member, Sri Andhavarapu Tavitayya, Sri Challa Narasimhulu Naidu and others present a memorandum in June 1966 to the Chief Minister and to the Minister for Co-operation stating that Sri Boddepalli Rajagopala Rao, who is to contest as a Congress Party candidate in the Srikakulam Parliamentary Constituency bye-election on the 27th of this month, had misused like water nearly 60 lakhs or rupees of governmental monies and peoples' monies belonging to Co-operative Sugar Factory, District Co-operative Central Bank and such other co-operative institutions which we treated as his own and managed under his control ? What action has been taken against it by the Government ?

2. Did not your government appoint the Regional Officer of Co-operative Societies, Panchayati Samiti, Amadalavalasa to inquire into the affairs of the Gandhi Building Society which is managed under the control of Sri Roddepalli Narayana Murthy who is the brother of Rajagopala Rao, member of the Legislative Assembly ? Could any body deny the fact that when that officer brought to light the inner secrets and brought them to the notice of the Government, the Government on the ground that officer did not obey their instructions, brought him out in the midnight, beat him almost to death and broke his legs and thrown him on the road ? Is he not still in the hospital ? When he complained to the peoples authorities, what action has been taken ? Is there no protection under your Government to your officers who are just and impartial ?

3. Did not the Supreme Court confirm the fine of Rs. 500/- imposed by the High court on Rajagopala Rao for contempt of court because he flouted the orders of the High Court in that he by force, oppressive behaviour and threat to the Factory Manager, forcibly took all ballot papers and himself, acting as an officer, conducted the Sugar Factory elections in an irregular manner. When it is clearly stated in the Co-operative Act that such persons should not be even primary members in co-operative societies, could you tell how this person could still be in the governing body of co-operative societies ?

"Could you not get a candidate who is better and who could render selfless service to people ? Of course, it is difficult to get men of high and moral calibre in the 1967 model Congress."

13. Section 123(4) of the Representation of the People Act, 1951, defines one of the corrupt practices, as under :

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

14. To constitute a corrupt practice under Section 123(4) four conditions are required to be fulfilled - (1) that there should be publication of a statement of fact relating to the personal character or conduct of the candidate; (2) that the statement should be false; (3) that the person making it should either believe it to be false or should not believe it to be true and that the statement was reasonably calculated to prejudice the prospects of that candidate's election; and (4) that it was published by the candidate or his election agent or by any other person with the consent of a candidate or his election agent. If the publication is by a person other than the candidate or his election agent, the consent of the candidate or his election agent must be established before the charge is held proved. Proof of express consent is not necessary; inference of such consent may be raised from the circumstances. Prior knowledge of the contents and the knowledge that it is likely to be published may raise an inference of consent, if the candidate deliberately keeps quiet and does not stop the publication if it be within his power. Where the offending publication has already been published and thereafter it comes to the knowledge of the candidate at the election and he does not take steps to repudiate it, the consent may not necessarily be inferred unless the candidate or his election agent permits or aids in publication. Section 100 of the Act sets out the grounds on which the election may be held to be void and one of the grounds is that 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 person with the consent of a returned candidate or his election agent, the High Court shall declare the election of the returned candidate to be void. Mere commission of a corrupt practice is not sufficient : it is proof of consent of the candidate or his election agent to the commission of the corrupt practice which requires the Court declare the election void. In the matter of publication of statements which are false and are reasonably calculated to prejudice the prospects of the candidate's election, proof of consent not infrequently assumes great importance, for even if it be proved that the publication has been made, unless it is shown that it was with the consent of the candidate or his election agent, the corrupt practice may not be held to be committed so as to invalidate the election. Case of publication without authority or with a view to create evidence by interested persons against the candidate who is likely to be successful are not unknown.

15. It is not in dispute that the leaflet Ext. P-357 was published. The leaflet was again reasonably calculated to prejudice the prospects of the appellant's election. Parts of the leaflet related to the personal character and conduct of the appellant and were defamatory of him and were likely to lower him in the estimation of the electorate.

16. It is not necessary to decide whether the statements of fact made were false, for the High Court has held that it is not proved that the respondent or his election agent was concerned with the publication or distribution of the leaflet and we agree with that view.

17. The evidence on this part of the case may be considered in three sections : evidence relating to the printing of the leaflet; evidence relating to the distribution of the leaflet at the meetings held at several places as part of the election campaign of the respondent; and evidence relating to the making of oral statements producing the contents of Ext. P-357 at those meetings.

18. It is common ground that one Dola Jagannatha Rao procured the leaflet printed at Sri Ramakrishna Printing Works at Srikakulam. It was averred in the election petition that printing expenses were defrayed by Latchanna, the election agent of the respondent and that Latchanna had caused distribution of the leaflet at several meetings held by the Swatantra Party at Srikakulam on April 2, 1967; at Mandasa On April 21, 1967; at Tekkali on April 20, 1967; and at Palasa on April 21, 1967. This was denied by the respondent. D. Jagannatha Rao was examined as a witness for the respondent. He deposed that he did get the leaflet printed on his own account and not at the instance

of anybody else, that he defrayed the expenses and paid on April 9, 1967, the printing charges amounting to Rs. 85/-, that he wrote the draft of the leaflet in his house at Srikakulam; that no one else was present on that occasion, that he did not consult any other person nor did he take any other person's advice in that behalf; that before he took it to the press he did not show it to any other person, and that as the printers could not properly decipher the manuscript they got prepared a fair copy by their own employee.

19. The witness admitted that he was a Swatantra Party worker and put his signature on the fair copy of the leaflet. Consent of the candidate or his election agent to the printing of the pamphlet cannot be inferred from that circumstance. To establish the consent of the respondent or his election agent to the printing of the leaflet, the appellant examined the Managing Proprietor of Sri Ramakrishna Printing Works who deposed that D. Jagannatha Rao placed with him an order for printing 10,000 copies of the leaflet Ext. P-357 and that in his books of account the name of D. Jagannatha Rao was entered as of the person who ordered printing of the leaflet. The witness stated that D. Jagannatha Rao had brought the written matter on 2 or 3 pages, and that the Manager of the Printing Press got "it fair copied" and took his signature on the fair copy which is Ext. P-358. At the time when he took delivery of the printed leaflet, D. Jagannatha Rao paid an amount of Rs. 85/- for printing charges. The witness stated that one Chelapati Rao also came over to the printing press but only after D. Jagannatha Rao had paid the charges and that Chelapati Rao had nothing to do with that leaflet. In support of the evidence the witness produced Exts. P-346 and P-346/1 copies of the order and the voucher evidencing payment by D. Jagannatha Rao. This testimony fully supported the case of D. Jagannatha Rao. There was some discrepancy about the date of placing the order. D. Jagannatha Rao said that the order was placed on April 7, 1967 : the Managing Proprietor said it was on April 4, 1967, but that was a minor discrepancy which did not affect the testimony of either witness.

This evidence did not support the case of the appellant. He examined D. Ramamurthy, P.W. 26, who stated that the leaflet Ext. P-357 was drafted in the house of Latchanna by K. Chelapati Rao Patnaik to the dictation of Latchanna in the presence of Dola Jagannatha Rao, that one week thereafter the leaflets were got printed by Chelapati Rao Patnaik and Dola Jagannatha Rao, and that Latchanna gave them Rs. 300/- and sent them to Srikakulam. In cross-examination the witness stated that he could not write Telugu though he could read a little. He also admitted that he was not usually consulted in any matter, but whenever required the members of the party used only to take work from him. To explain his presence at the drafting of the leaflet he stated that Latchanna called him on April 25, 1967, at his residence, that when he reached Latchanna's place the leaflet was being drafted and that he was detained till the drafting was over and thereafter he was sent away. The witness could not explain the reason why the leaflet was not printed at Guntur. Witness D. Ramamurthy sought to support the case of the appellant on several other matters. The High Court observed that his statement was "highly artificial" that there was no reason why he should have been called by Latchanna to be witness to the drafting of the manuscript of the leaflet, and that the "artificiality of his statement was obvious on the face of it and further his testimony did not bear scrutiny at all". Nothing has been said before us which would justify us in taking a different view.

20. Chelapati Rao, R.W. 1, was examined on behalf of the respondent. He denied that he wrote the draft or took any part of the printing of the leaflet at Latchanna's instance. He said that he had seen the leaflet for the first time only after it was printed and D. Jagannatha Rao had taken delivery and never thereafter.

21. Latchanna denied all knowledge in connection with the printing and dictation of the contents of

the leaflet Ext. P-357.

22. The evidence clearly does not make out the case of the appellant. It was the case of the appellant that Latchanna got the leaflet drafted and printed. From the mere fact the D. Jagannatha Rao was a partyman and a member of the State Council of the Swatantra Party of which Latchanna was the President, and that D. Jagannatha Rao had contested on the Swatantra Party ticket for a seat in the Andhra Pradesh Legislative Assembly in the general election in 1967, no inference arises that the leaflet was published with the consent of the respondent or his election agent.

23. At the trial the appellant relied also upon the publication of the contents of the leaflet in two weekly newspapers - Bahujana and Vahini - in their issues of April 17, 1967, and April 24, 1967 respectively, In the first newspaper the caption shows that it was a questionnaire of Srikakulam public to the Minister; and in the second newspaper the caption showed that it was a questionnaire by the Srikakulam public through D. Jagannatha Rao, President of Nagrskatakam Swatantra Party. Latchanna is the printer, publisher and editor of Bahujana. The contents which were published in the Bahujana largely tally with Ext. P-357. The caption, however, is different. Latchanna deposed that he did not send the leaflet for publication in the newspaper from Srikakulam to Hyderabad. He denied the suggestion that it was not D. Jagannatha Rao but he himself who caused the publication of the article in Bahujana. He further stated that though he was the editor of the paper he was away from Hyderabad and in his absence his brother's son G. Kranti Kumar was editing the paper, and that he came to know of the publication many days after the election was completed. There was no allegation in the petition that the publication in the Bahujana was caused by Latchanna or by the respondent. The evidence brought before the Court could not cure the defect in the pleadings. There is no evidence also that either the respondent or his election agent Latchanna had knowledge before the date of the publication or even before the date of the election of the respondent.

24. It was said that the respondent had expressed his thanks for the work done by the Vahini newspaper during the election. This was not a matter relevant to the issue under consideration, and the High Court was right in holding that it would be extending the scope of the inquiry contemplated to be made on the allegations made in the petition to hold that by reason of the publication in the Vahini an Bahujana the respondent or his election agent were guilty of any corrupt practice. In the petition it was expressly averred that the leaflet Ext. P-357 was published by the respondent and his election agent. It was not pleaded that the contents of the leaflet Ext. P-357 with some modifications were published in the Vahini and Bahujana and that by that publication a corrupt practice under Section 123(4) was committed by the respondent.

25. The appellant also alleged that at meetings held at four places - Takkali, Palasa, Mandasa and Srikakulam - these leaflets were distributed. In support of this case Suri Suryanarayana, P.W. 25, D. Ramamurthy, P.W. 26, Kirtichandra Rao, P.W. 28, C. V. Babu Rao, P.W. 29, M. Narayana Rao, P.W. 30, and Sana Veerbhadra Rao, P.W. 31, were examined. In rebuttal, K. Chalapati Rao Patnaik, R.W. 1, Suvari Sanyasi Apparao, R.W. 2, Bendi Appalla Suri, R.W. 3, D. Kondaih Choudari, R.W. 8, Garimella Kameswara Rao, R.W. 11, B. Narayana Swamy, R.W. 15, Narayana Dandekar, R.W. 20, G. Chandraih Naidu, R.W. 21, N. Veerachari, R.W. 22, Bendalam Rama Murthi, R.W. 24, Allu Suryanarayana, R.W. 239 and Raj Vallabh Mishra, R.W. 30, besides the respondent and his election agent, were examined to disprove the case of the appellant. The case of the respondent was that he was not present at any of the meetings except at Srikakulam which he attended at its concluding stage. Latchanna also denied that he was present at any of those meetings.

26. The High Court made a painstaking analysis of the evidence of the witnesses relating to the

holding of the meetings and the distribution of the leaflet Ext. P-357 and the witnesses examined on behalf of the respondent, which ran into as many as 23 printed pages, and in conclusion observed :

"From the above discussion it is clear that it was Dola Jagannatha Rao himself who got printed Ext. P-357 of his own accord and neither the respondent nor his election agent was in any way concerned with it. The respondent and the election agent were in no way connected with its publication, when several thousands of copies of the pamphlet had been printed they must of course be for purposes of distribution. Dola Jagannatha Rao could have personally distributed them or caused their distribution through others. But there is no positive evidence that these pamphlets were distributed amongst the public either by Dola Jagannatha Rao himself or by the election agent, as alleged, or to the knowledge of either the respondent or his election agent."

We see no reason to disagree with the view of the High Court on the evidence.

The question which remains to be considered is whether a corrupt practice falling within sub-section (6) of Section 123 was committed by the respondent. Incurring or authorising expenditure in contravention of Section 77 is a corrupt practice. Section 77 requires that every candidate at the election shall either by himself or by his election agent keep a separate and correct account of all expenditure in connection with the election incurred or authorised 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. By sub-section (3) of Section 77 the total of the said expenditure shall not exceed such amount as may be prescribed. For the Parliamentary election an amount of Rs. 25,000/- was prescribed as the maximum amount to be spent. The respondent submitted a return disclosing expenditure of Rs. 15,834.92.

27. It was averred in the election petition that the total expenditure of Rs. 15,834.92 returned by the respondent as election expenditure under Rule 86 was a "gross under-estimate of the expenses incurred by the respondent in connection with the election", that the respondent had not included in the account various items of expenditure incurred and had also "given grossly diminished figures in respect of items included therein", that "it was obvious that his accounts did not reflect the expenditure actually incurred, but it only represented a fictitious figure manipulated with a view to conform to Rule 90". It was further averred that a large amount aggregating to Rs. 3 lakhs and more was spent for the purpose of the election. After setting out certain argumentative matters, it was stated in the petition that the expenditure in respect of the following items "had been suppressed or diminished or reduced in the account rendered by the respondent".

(1) the amount of Rs. 1,192/- paid to Vijaya Auto Service under voucher, dated April 30, 1967, for the purchase of diesel oil, motor spirit and lubricants was not included;

(2) though in fact the respondent incurred and paid an amount of Rs. 10,000/- for the purchase of motor spirit from the Esso Standard Bunk, Srikakulam, only an expenditure of about Rs. 200/- was shown in the account of election expenses"

(3) that an amount of Rs. 6,000/- was spent for the purchase of motor spirit from Esso Standard Bunk, Sompeta, but only Rs. 607.94 were shown in the account;

(4) that various amounts aggregating to Rs. 10,000/- were paid at different bunks for

motor spirit and diesel oil but those amounts had been deliberately suppressed from the account. Thereafter five names of the proprietors of those petrol bunks were mentioned.

The petition then proceeded to say that the total expenditure incurred on motor spirit was far in excess of Rs. 1,000/- odd shown in the account rendered, and that the motor spirit purchased during the period from the motor spirit bunks at Srikakulam, Sompeta, Itchapuram, Amadalavalasa and Tekkali and other places was 'ridiculously low', that a number of lorries from outside or within the district were engaged by the respondent during the last week of the election for propaganda purposes, as also on the polling day for conveying voters to the polling stations, and the expenditure on diesel oil, drivers and cleaners in respect of those vehicles had not been included in the account. The petition then referred to the expenditure on "wall posters" on printing, distributing and exhibiting them was far below the amount incurred, and only an amount of Rs. 2,081/- was shown as expenditure incurred by the respondent in his account of election expenses on that account. It was then stated that the expenditure incurred by the respondent in respect of "cycle rickshaws and jutkas" was not shown, that wages and maintenance of about 1,000 workers for about three weeks and about 1,500 polling agents on the day of poll "was not accounted for" that no expenditure incurred towards boarding and lodging of the workers at the election "was accounted for"; that the amount of Rs. 4,000/- paid by the election agent of the respondent Venkayya to Sri Venkateswara Lodging and Boarding, Srikakulam, was "suppressed in the account" of election expenses; and finally an amount of Rs. 500/- incurred for the purchase of voters' lists for the seven Assembly constituencies was also not included.

28. The case of the appellant was sought to be proved by examining a large number of distributors at "petrol bunks" from whom motor spirit was purchased on cash in respect of various vehicles. It was sought to be proved that a large number of vehicles were used for his election campaign by the respondent and the expenditure incurred according to the appellant exceeded Rs. 23,000/- for motor spirit alone. A copy of a bank account maintained in the name of Latchanna with the Andhra Bank Ltd., Srikakulam, was tendered in evidence to support the case of the appellant that large amounts were withdrawn from time to time during the election days and it was suggested that all the money withdrawn was utilized by Latchanna for the election campaign of the respondent. It was the respondent's case that Latchanna did not have custody of the funds intended to be used for the election campaign, that he, the respondent, had kept his money for the election campaign with one Kavuri Venkaiah and that the latter spent the amount for election purposes. The respondent said that the amount spent by him was partly his own and partly received from donations. He denied that any election fund was opened by him, nor was such fund opened by Latchanna. He further stated that apart from Rs. 3,500/- provided by him in cash and Rs. 5,000/- being the proceeds of a cheque received by him as donation, a sum of Rs. 6,000/- was handed over to Kavuri Venkaiah and that some postal money orders addressed to him were received by Venkaiah in his absence. Those amounts were sent by his friends who were interested in him. The total amount that was received by way of donations or contributions from others was Rs. 18,000/- or Rs. 19,000/-. The entire amount was not spent for the election, and Venkaiah who had opened a bank account and kept the amounts in that account, returned the balance to him. According to the respondent the expenses of the election were met out of the amounts maintained in K. Venkaiah's name and not from the monies that belonged to Latchanna or the Swatantra Party or any other person. The case of the respondent was supported by Venkaiah. Latchanna also supported that case. Latchanna was the President of the

State Swatantra Party. He stated that in a general elections, the Swatantra Party had spent large amounts of money and had incurred debts, and in order to pay off those debts the party had asked for donations from members of the State Party and also the Central Party, that an appeal was also made to the press to invite donations and also a request was made to the Central party to make some grants, that in March and April 1967 some amounts were received in respect of which he maintained an account with the State Bank, Srikakulam, and a joint account in the State Bank at Sompeta in the names of his wife and himself, that certain amounts were received in his name by cheques and drafts and they were put in the joint current account at Srikakulam, but "not one pie out of this account" was used for the bye-election, and out of the amount that was left as balance after discharging debts he paid Rs. 16,000/- for the purchase of a jeep for the Central Party.

29. A mere general allegation that more than Rs. 3 lakhs were spent by the respondent or his election agent or other persons for the purposes of the election is not sufficient to make out a case under Section 123(6) of the Representation of the People Act, 1951. It is not sufficient merely to allege that large sums of money were spent for the purposes of the election.

30. It is the case of the respondent that his friends and sympathisers sent him certain sums of money, and that whatever monies were received by him or in the name of his wife or by Venkaiah under his authority remained with Venkaiah. These receipts aggregated to Rs. 19,000/- out of which Rs. 15,834.92 were spent for the election. Expenditure, if any, incurred by the party which sponsored the candidature of a candidate cannot be taken into account for the purpose of determining whether the corrupt practice within the meaning of section 123(7) was committed by the candidate. In *Rananjaya Singh v. Baijnath Singh and others* ((1995) 1 SCR 671 : AIR 1954 SC 749 : 1954 SCJ 838) this court held that expenditure incurred by persons other than candidate for election purposes will not be taken into account (unless it is incurred by such third person as the candidate's agent) in determining whether a corrupt practice was committed by the candidate; see also *Ram Dayal v. Brijraj Singh*, ((1970) 1 SCR 530 : AIR 1970 SC 110) and *Mehgraj Patodia v. R. K. Birla*. (1970 (2) SCC 388) It is true that Latchanna had from time to time withdrawn from the Andhra Bank various amounts of money. Those amounts, he says, were utilised for satisfying the debts of the party incurred in the general elections. There is no evidence to the contrary led by the appellant. Nor is there any evidence to show that the respondent had received any amount in excess of Rs. 19,000/- out of which he claimed he had spent Rs. 15,834.92.

31. A considerable body of evidence was tendered by the appellant to prove that a large number of vehicles were used for the election campaign of the respondent. Many witnesses were examined to support that case. The High Court made a detailed analysis of the evidence and held that only four vehicles Nos. (1) APK-9486 jeep, (2) APU 7414 Ambassador car, (3) APY 7719 Ambassador car and (4) APG 4329 Fiat-car, were retained and used for "election purposes" and expenses for purchase of motor-spirit and oil for those vehicles during the election days were shown in the account. Besides, this, in the view of the High Court, two more vehicles Nos. APG 2123 and APP 97 were used for some time for the purpose of the election. These two vehicles were taken by Balaram and Chitti Babu once to Kanchili petrol bunks, and to that extent they may be held to have been used for the errand of the respondent. Taking into account this amount, the total amount in relation to the motor-spirit used for Kanchili was Rs. 1,141.13. The High Court held that on the evidence, the cash bills which were produced by the appellant in respect of the motor-spirit expenses were not connected with the motor vehicles of the respondent or of his agent or of any vehicles maintained by the respondent for election purposes. The High Court found the books of account of Vijaya Auto Service and the "petrol bunk" of Malla Satyanarayana and Brothers a Kanchili unreliable, and held that only those bill books may be taken into consideration which recorded

transactions signed by person admitted to be the agents of the respondent. The High Court accordingly held that in addition to the amount admitted by the respondent an amount of Rs. 1,521.21 was proved. No substantial argument was advanced before us challenging the finding recorded by the learned Trial Judge on the question as to the expenditure incurred for the motor vehicles employed in the course of the election of the respondent, and we see no reason to disagree with the conclusion recorded by the High Court on a very elaborate and painstaking analysis of the evidence.

32. It was urged that as many as 1,100 persons were employed by the respondent during the election days in the campaign for the respondent, and besides their remuneration expenses for their boarding and lodging were incurred by the respondent, and that amount was not disclosed in the account filed under Section 77(3). It was the case of the respondent that several persons had worked for the Swatantra Party candidate at the election. According to the rules of the Swatantra Party they worked voluntarily, and no remuneration was paid to any of the workers, because payment of remuneration to any party worker was against the principles of that party. The High Court held that transport charges and expenses for meals of the workers were not incurred by the respondent, but by the Swatantra Party. In argument it was conceded there was nothing to show that any expenditure was incurred by the respondent for those workers. Venkaiah had, it is said, paid under the directions of Latchanna certain amounts of money for the expenses incurred for the workers of the Swatantra Party. But in the absence of any evidence to show that any specific sums of money were expended on certain items by the respondent or his election agent, no conjecture can be permitted to defeat a candidate who has been elected.

33. Towards the boarding and lodging expenses of the workers, it appears, Simma Jagannadham, President of the District Swatantra Party, had paid Rs. 5,000/- and Rs. 1,200/- after the election. It was proved by the evidence that the party office was in the house of Simma Jagannadham. The workers were lodged and boarded at a place called Sri Venkataswara Lodging and Boarding Lodge at Srikakulam, and the expenditure incurred for them was met by Sri Venkateswara Lodge. The amount which were paid by Simma Jagannadham were not shown to be paid towards the expenses of lodging and boarding of the workers at Sri Venkateswara Lodge. The Manager of Sri Venkateswara Lodge apparently boarded and lodged those workers free of charge. In the absence of any reliable evidence to the contrary, the finding of the High Court that no expenditure was incurred in respect of those workers by the respondent must be accepted.

34. The appellant's case that expenditure was incurred for "wall posters" and for printing, distributing and exhibiting them amounting to Rs. 2,081/- was not pressed, nor was the case about the expenditure incurred in respect of "cycle-rickshaws and Jutkas" pressed before us. Even if it be granted that an amount of Rs. 500/- which was incurred for purchasing voters' lists be taken into account the total amount proved to have been expended by the respondent does not exceed Rs. 25,000/- prescribed under the Act.

35. We have carefully considered the evidence in the light of the argument advanced at the Bar, and we are of the view that no case is made out for our interference with the conclusion recorded by the High Court.

36. The appeal fails and is dismissed with costs.

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