

Bhanu Kumar Shastri

Vs

Mohan Lal Sukhadia and Others

Civil Appeal No. 1515(e) of 1968

(G. K. Mitter, A. N. Ray JJ)

22.01.1971

JUDGMENT

RAY, J. -

1. This appeal is against the judgment of Rajasthan High Court dated May 10, 1968, dismissing the Election Petition filed by the appellant against the Respondent Mohan Lal Sukhadia.
2. The election of Respondent Mohan Lal Sukhadia to the Rajasthan Legislative Assembly from the Udaipur City Assembly Constituency was challenged. The appellant contested the election on Jana Sangh ticket. The respondent contested on Congress ticket. The respondent was the Chief Minister of Rajasthan at the time of the election. Respondent No. 2 Mohan Lal also contested the election but obtained only 1,262 Votes. Respondents Narendra Singh Lakheri and Girdhari Lal Sharma Nos. 3 and 4 respectively submitted their nomination papers but withdrew them. For the purpose of this appeal we are concerned only with the respondent Mohan Lal Sukhadia.
3. The polling took place on February 15, 1967. The result was declared on February 21, 1967. The respondent polled 24,272 Votes. The petitioner obtained 20,841 Votes. The respondent won by a margin of 3,431 Votes.
4. After the election the Congress Party was reduced to a minority. The respondent Sukhadia who was the Chief Minister tendered his resignation.
5. On March 13, 1967, the President's Rule was declared in Rajasthan, which was withdrawn after a period of 44 days on April 26, 1967. Thereafter the respondent Sukhadia again became the Chief Minister.
6. The election petition was filed on April 7, 1967. The respondent Sukhadia filed an application praying that certain allegations in the petition were vague and lacking in particulars required by Section 83 of the Representation of People Act and, therefore, the allegations should be struck off. The High Court ordered the Petitioner to file a detailed reply giving full particulars in respect of each matter. On May 29, 1967, the appellant furnished particulars. The High Court by orders, dated July 3, 5 and 6, 1967, allowed the appellant to incorporate the said particulars in the amended petition and further allowed the appellant to furnish more particulars in respect of other allegations of corrupt practices. On July 19, 1967, an amended Election Petition was filed incorporating the amendments allowed by the High Court. Thereafter written statements were filed and the parties filed applications under Rule 12 of the Election Rules for production of the documents. Issues were framed on August 14, 1967. The appellant filed a finally amended petition on November 13, 1967.

The appellant examined 30 witnesses and the respondent Sukhadia examined 46 witnesses.

The High Court decided all the issues in favour of the respondent Sukhadia and dismissed the Election Petition but left the respondent to bear his own cost.

In the present appeal we are concerned only with issues Nos. 3(a) and 4(a). Issues Nos. 3 and 4 are as follows :

3(a) Are the allegations made in Paragraphs 8, 9, 10 and 11 of the Election Petition correct ?

3(b) If so, did the respondent No. 1 commit the corrupt practice specified in Section 123(1) or Section 123(2) of the Representation of People Act, 1951 ?

4(a) Are the allegations mentioned in Paragraphs 12, 13, 14 and 15 of the Election Petition correct ?

4(b) If so, did the Respondent No. 1 commit corrupt practice specified in Section 123(4) of the Representation of the People Act, 1951 ?

As to issue No. 3 based on Paragraphs 8, 9, 10 and 11 of the Election Petition, allegations of corrupt practice of bribery and undue influence concerned with the construction of certain works of general public utility to the inhabitants of Udaipur like the covering of Baluchistan Colony Nallah, construction of road at Tekri, installation of water-taps in Udaipur City and the grant of Pattas to the inhabitants of the Raigar Colony.

In the Petition the appellant made 74 allegations. At the trial 55 allegations were given up. In the present appeal the appellant pressed allegations first about Pattas in Raigar Colony; secondly, about roads in Tekri; thirdly, covering of Nallah in Baluchistan Colony; fourthly construction of water-taps; and fifthly, about Ex. 8-A as defamatory of the personal character and conduct of the appellant.

7. The appellant's case with regard to Raigar Colony is to be found in Paragraph 9 of the amended Petition. The gist of the allegation is as follows :

8. The respondent Sukhadia, is agents and other persons with the consent of Sukhadia promised the voters of the Raigar Colony, Udaipur, at a meeting that he would get them Pattas issued at a nominal rate of Re. 1/- only for the construction of their houses and under this inducement he asked the Raigar voters to vote for him. Because of this inducement many Raigar voters voted for the respondent Sukhadia. The respondent Sukhadia by his undue influence as Chief Minister got issued an order No. 66/5077, dated February 10, 1967, from the Director, Social Welfare Department, Jaipur, to grant Pattas to Raigars of Thakker Bapa Colony for construction of houses at a nominal price of Re. 1/- for each Patta only. The respondent Sukhadia thus committed corrupt practice as defined under Section 123(1) of the Representation of People Act. Girdhari Lal, election agent of the respondent Sukhadia arranged a meeting on February 5, 1967, at the Raigar Colony. About 100 persons gathered. The audience consisted of Harijans and Raigars. Prominent persons among these were Kalu Raigar, Shankar Harijan and Keshulal, the Secretary of the Raigar Colony. At this meeting the Respondent Sukhadia said that he was managing Pattas of the land to be allotted to them for Re. 1/- each and he requested them to vote for him.

9. The High Court held that it had not been proved that the respondent Sukhadia made a bargain

with the people of Raigar Colony on February 5, 1967, that if they promised to vote for him he would arrange for the grant of Pattas to them at a nominal charge of Re. 1/- each Patta.

10. The respondent Sukhadia stated that the order, dated February 5, 1967 (Ex. 271) passed by him and the order, dated February 10, 1967 (Ex. 44) passed by the Director of Social Welfare were in furtherance of the policy of the State Government announced as early as April 27, 1959, (Ex. A-99) and further clarified by a subsequent order, dated February 26, 1962 (Ex. A-100). Neither in the original petition nor in the amended petition there was any mention of recovery of development charges by the Urban Improvement Trust in connection with the issue of Pattas. Sukhadia's evidence was that the Urban Improvement Trust under the aforesaid orders of 1959 and 1962 were to issue Pattas after receiving the nominal charge of Re. 1/- per Patta from the inhabitants of the locality without insisting upon the recovery of development charges as condition precedent to the issue of Pattas.

11. The correspondence which was tendered in connection with the Raigar Colony indicates that from the year 1955 up to the month of July, 1967, certain controversies were going on between the Grihya Nirman Sahkari Samiti, Thakker Bapa Colony, on the one hand and the City Improvement Committee and the Urban Improvement Trust on the other. The City Improvement Committee which was the predecessor of the Urban Improvement Trust from the beginning took the stand that Pattas in respect of the houses in occupation of the original inhabitants of the locality could not be issued unless they agreed to pay the price of the land and the development charges incurred by the City Improvement Committee. The Samiti on the other hand was anxious to see that the Pattas were granted without having to pay development charges because the people were poor. In Ex. A-99, dated April 27, 1959, the State Government made an order laying down the conditions on which the Pattas of the houses could be issued on payment of the nominal price of Re. 1/-. Thereafter there was demand for issue of Patta on payment of Re. 1/-. The Social Welfare Department wanted the order, dated April 27, 1959, to be implemented and the City Improvement Committee insisted on payment of development charges amounting to Rs. 14,528.94. The attitude of the Government as represented by the Social Welfare Department was that Pattas should be issued to the inhabitants of the locality in terms of April 27, 1959 order, on payment of Re. 1/- only per Patta. The Urban Improvement Trust and the City Improvement Committee were equally insistent on payment of development charges.

12. Ex. 44 being a letter, dated February 10, 1967, issued by the director of Social Welfare Department to the District Welfare Officer was the sheet-anchor on which the appellant relied. A copy of that letter was sent to Keshulal, Secretary of the Girhya Nirman Sahkari Samiti, Thakker Bapa Colony. In that letter it was stated : "..... it is submitted that there are directions from the Government on the application of Keshulal... that action be taken without delay in granting Pattas to the residents of that Raigar Colony, Udaipur, on payment at the rate of Re. 1/-." This letter, dated February 10, 1967 (Ex. 44) seems to have had origin in 1959 and the discussions in the year 1966 as will appear from Ex. 268 being an application, dated December 29, 1966, addressed by Keshulal as Secretary of the Colony to the respondent Sukhadia as Chief Minister. There is a noting on that application in the hands of the Chief Minister to the effect "Secretary, Social Welfare Officer to discuss the question of subsidy of 52 of the colonies and Pattas." That noting was on December 28, 1966. On December 31, 1966, the Secretary wrote as follows :

"Please speak immediately, D. S. (Deputy Secretary) Social Welfare."

In this background it is unmistakable that the demand of Raigar Colony for Pattas was as old as a

decade and the inhabitants of the colony saw the Chief Minister in December, 1966, and he asked the relevant department to look into the matter. Ex. 270, dated January 21, 1967, and 271, dated February 5, 1967, are office notes and order pursuant to the application sent by Keshulal in the month of December, 1966. The Director Social Welfare Department in Ex. 270 stated that "Pattas were not granted because the development charges were not paid". The Secretary, Social Welfare Department made a note on Ex. 270 that the Chief Minister (Respondent Sukhadia) was going on tour on January 24, 1967 and, therefore, there was no possibility of discussion in the near future. On February 5, 1967, there is a noting by the Chief Minister on the file that the Raigar residents were ready to get Pattas on payment of Re. 1/- and after getting the amount deposited action should be taken in getting the Pattas granted to them and the Social Welfare Officer should be asked to pay personal attention to take action in the matter and other problems such as setting up industries, water arrangements, etc. These documents show that Ex. 271, dated February 5, 1967, was an office note on the file and did not have any independent existence. The Chief Minister was asked to give his directions on Keshulal's application in the month of December, 1966. The Director of Social Welfare, therefore, on February 10, 1967, wrote Ex. 44 "about grant of Pattas to the residents of the colony".

13. Under Section 123(1) of the Representation of People Act, 1951, bribery is mentioned as a corrupt practice and bribery is any gift offer or promise by a candidate.... of any gratification to any person whosoever with the object of directly or indirectly inducing (b).... an elector to vote in an election.

14. The appellant's allegations were these. Girdhari Lal, election agent of respondent Sukhadia, arranged a meeting on February 5, 1967, at Raigar Colony, 100 persons gathered. The audience consisted of Harijan and Raigars. The respondent Sukhadia at that meeting said that he was managing Pattas of the lands allotted to Raigars and Harijans for Re. 1/- each and requested them to vote for him. These particulars of the meeting were furnished by way of amendment. Apart from the boldness of allegations as to bargain for votes, the oral evidence adduced on behalf of the appellant was that of P.W. 4 Lakshmi Narain and P.W. 12 Kalu Ram. It is significant that Shankar Harijan and Keshulal, who were mentioned by the appellant as having been present at the meeting were not examined. Kalu Ram was a member elected to the Municipal Council, Udaipur on Jana Sangh ticket. Lakshmi Narain was neither a Harijan nor a Raigar. The appellant alleged that the audience consisted of Harijans and Raigars. Lakshmi Narain said that when the respondent Sukhadia began addressing a meeting a Harijan and Raigar are stated to have stood up and mentioned that the Urban Improvement Trust was not permitting them to build an upper storey on the ground that they had not got Pattas and respondent Sukhadia is supposed to have said that he would get Pattas prepared and asked them to vote. The question of building the second storey was nowhere to be found in the allegations in the petition.

15. Kalu Ram said nothing about the alleged bargain for votes. On the contrary, Kalu Ram said that he did not remember to have heard any conversation and he did not state anything about Pattas being prepared from Jaipur and being sent to Udaipur before the polling date, though Lakshmi Narain deposed to that effect. If the Urban Improvement Trust, Udaipur, was the authority for issuing Pattas it is unbelievable that the respondent though Chief Minister of the State would make a promise for getting the Pattas prepared at Jaipur and send them to Udaipur. Lakshmi Narain said that he was taken by Kalu Ram to the appellant 5 or 6 months after the election. The appellant then asked Lakshmi Narain whether Parchas (leaflets) had been distributed. Lakshmi Narain is supposed to have showed a Parcha Ex. 8-A whereupon the appellant asked Lakshmi Narain if the latter could give evidence in Court about distribution of Ex. 8-A. Even at that time Lakshmi Narain did not utter

a word about the meeting on February 5, 1967, and far less of any bargain by respondent Sukhadia for votes at the election. Lakshmi Narain was an interested witness because he brought Ex. 8-A of his own accord, though he was not summoned to produce any document in Court. Kalu Ram the other witness admitted that as early as 1959, the Rajasthan Government passed an order that Pattas be issued to the residents of Raigar Colony on a payment of Re. 1/-. This was merely implementing what the Government had decided in 1959. The respondent's office note on February 5, 1967, was nothing new and there was no temptation offered by him.

16. The tour programme of the respondent Sukhadia was exhibited, i.e., Ex. A-116. Between 3.00 p.m. and 5.00 p.m. on February 5, 1967, respondent Sukhadia spoke at a meeting of Sindhi Samaj at 4.00 p.m. That statement of Sukhadia was put to him in cross-examination to be correct. Girdhari Lal, the agent of Sukhadia, also spoke of the correctness of the tour programme of Sukhadia and no challenge was made. Roop Kumar P.W. 3 also spoke of the meeting at Sindhi Samaj at about 4.00 p.m. and he was not cross-examined. Nowhere in the election petition the appellant mentioned the time of the meeting at Raigar Colony on February 5, 1967. In the tour programme of the respondent Sukhadia it will appear that he met the Kerala Samaj on February 5, 1967, between 3.30 p.m. and 4.00 p.m. at Vidhya Peeth. Between 4.00 and 5.00 p.m. he was at Sindhi Samaj and between 5.00 and 5.30 p.m. he met Gujarati Samaj near Fateh School. The respondent Sukhadia held meeting of the Sindhi Samaj at Saletia Ground behind the Vidhya Peeth on February 5, 1967, at 4.00 p.m. The police record contained in the file which was summoned at the instance of the appellant contained a copy of the tour programme of Respondent Sukhadia which tallied with the tour programmes produced by the respondent Sukhadia and orally deposed to by Sukhadia and witnesses on his behalf.

17. Ex. 109 was a copy of the cyclostyled address presented to the respondent Sukhadia on behalf of Sindhi Refugees at their meeting on February 5, 1967. This is an additional ground to support the respondent Sukhadia's evidence. The oral evidence of Lakshmi Narain and Kalu Ram is unworthy of belief. The documentary evidence fortifies the oral evidence of respondent Sukhadia that there was no meeting of Raigars and Harijans at Udaipur on February 5, 1967.

18. The assertion made by the appellant that the order, dated February 5, 1967, was passed by the respondent Sukhadia on the stationery of the Chief Minister is baseless. The original belies that case. On the contrary the order, dated February 5, 1967, is nothing but a noting by the Chief Minister on the file which had been started pursuant to the order of the Government in the year 1959 and occasioned more so because of the application made by Keshulal in the month of December, 1966.

19. The High Court rightly rejected the oral evidence of bargain and characterised the evidence on behalf of the appellant as being wholly "concocted and fabricated".

20. Counsel for the appellant submitted that the respondent Sukhadia also made an order for remission of development charges. The documents relied on by the appellant do not support any such charge. This is a new case in this Court. There is no foundation for it in the pleadings. This case was not made in the High Court. Therefore, this case cannot be allowed to be made at this stage.

21. The second corrupt practice on which the appellant relied is to be found in Paragraph 8 of the Petition as amended. Broadly stated the appellant's allegations were that the respondent Sukhadia ordered Public Works Department (P.W.D.) to construct a road at Tekri though it was a municipal

area and P.W.D. had to jurisdiction and further that the respondent held a meeting on February 5, 1967, and during his speech said that he was arranging for construction of roads and installation of water-taps and requested the people to vote for him. This part of the appellant's case concerns an area called Tekri. There was a new railway station and a yard was constructed that necessitated a new road linking police lines to a place called Salumber road junction. P.W.D. undertook to construct a road and when constructed that would have made a thoroughfare through the Police Lines from the Railway Station to the Block Office. The police authorities objected. The Banjara Samiti which took up the cause complained about the obstruction by the police. Work was held up. This was in the year 1965-66. When the Police Lines were constructed a short link route to Tekri village was closed. Therefore, it was decided to construct an approach road to Tekri. When the thoroughfare through the Police Lines was abandoned in the year 1966, the Executive Engineer took a decision to upgrade part of the road and to use tarred road to make a thoroughfare via village Tekri to give a by-pass to Police Lines. Tekri village was situated to the east of Police Lines at Udaipur. The new railway station was to the north-west of the Jail. The Jail was also to the north-west of the Police Lines. The proposed road was from the Railway Station to Tekri village and then beyond the Police Lines to a point to the Block Office from the north to the south. Tekri village was to the east of the proposed road.

In the original petition the appellant alleged that the Executive Engineer Chhail Behari Mathur canvassed votes to support respondent Sukhadia. In the amended petition the appellant alleged that Chhail Behari Mathur at the instance of the respondent Sukhadia passed orders for construction of roads. The appellant in his oral evidence said that he had no personal knowledge and was indefinite as to which road is allegation related but that it related to a road which ran through Tekri village. Madan Lal, Chairman of the Municipality and a witness on behalf of the appellant could not point to any road construction by the Municipality after December 28, 1959, when Tekri was included in it. Two other witnesses Phoola P.W. 25 and Madan Lal P.W. 26 said that the road at Tekri was completed two or three days before the polling. The High Court disbelieved both of them.

22. There are important exhibits as to Tekri road construction. There are Contractor's Agreement Ex. A/128 dated February 10, 1967, Measurement Book Ex. A/129 and Running Bill Ex. 70, all for earth work. Ex. A/130, dated April 1, 1967, and Ex. A/131 are the Agreement and Measurement Book respectively and both are for soling. The work was described "special repairs to approach road to Tekri". On behalf of the appellant it was emphasised that the change was significant. Ex. A/125 was the Agreement, dated September 3, 1965, for construction of road by Banjara Samiti in the year 1965. Ex. A/126, is a letter of complaint by the Banjara Samiti against the hindrance by the police. These documents A/125 and A/126 both indicate that when it was intended to have a thoroughfare through the Police Lines to Jaisamand Road some criticism was made as to the name given :- "Construction of road connecting Police Lines to Jaisamand Road" in the file of the year 1965 but when work commenced it was described as "Special repairs approach road to Tekri.". In Ex. A/127, dated April 10, 1967, being estimate for the road it will appear that when the short link to Tekri village disappeared in Police Lines it was intended to build "approach road to Tekri" which was shown on a plan Ex. 80. When the thoroughfare through the Police Lines was abandoned because of objection by the police, it was decided to bypass the Police Lines and upgrade the entire road from the Railway Station to the Block Office. The name was amended as "road from Railway crossing to join Salumber road junction via Tekri village to give bye-pass to Police Lines." The plan Ex. 80 proves that. The construction whatever the name of the road was remained the same road. The name is, therefore, of no moment.

The High Court held that there was no tender and that the work was split to restrict the contract to

the competence of the Assistant Engineer. Rule 369 of the Financial and Account Rules states that it is not the intention to prevent the officers from giving out to different contractors a number of contracts relating to one work even though such work may be estimated to cost more than the amount up to which they are empowered to accept tenders. The total cost of the road was approximately Rs. 20,000/- for material and labour. The 8th Running Bill was for Rs. 9,473.00 and the 9th Running Bill was for Rs. 1,025.00. Both the Running Bills were pursuant to Agreement No. 15 of 1966-67 and these Bills were passed in the months of April and May, 1967. There was a standing yearly contract to supply stones and ballast. The total labour cost for earth work, soling, consolidation of stone ballast was Rs. 7,840.75 as will appear from Ex. A/128 and Ex. A/130 (vouchers Nos. 63 and 44) and other vouchers. It is, therefore, correct to hold that the amount spent was within the limit and these were valid piece-work agreements and all Bills, vouchers and Measurement Books indicate that there was no irregularity.

23. The High Court made some comments as to production of record for Tekri village. It stated that the record was produced after great delay. The criticism is not justified. The requisition of record was made on November 15, 1967, and the record was sent up on December 15, 1967. An application for summoning documents was made by the appellant on August 12, 1967, and an order was made on August 14, 1967, that the appellant should requisition these from the Public Works Department and the appellant made the requisition on November 15, 1967. On September 8, 1967, the respondent had also made a requisition for the file Relating to Tekri. The Executive Engineer made a slight confusion between the two requisitions. In any event the entire record was before the Court and none of the parties suffered from any non-production.

24. The High Court held that Ex. A/130 being the agreement for soling was entered into on April 1, 1967, and was a fictitious document because soling was done on February 14, 1967, and not after April 1, 1967. It is also important to note that entry in log book Ex. 68 dated February 14, 1967, speaks of soling and pressing by road roller over 300 feet in length on February 14, 1967. The relevant vouchers show that 18,275 cft. ballast was spread. The ballast was 12 feet wide and 4 1/2 inches deep. The total length of the road was 4,000 feet up to Tekri village. Secondly, the relevant vouchers show that 16,722 cft. soling was laid. Soling was done 12 feet wide and six inches deep. That worked out a total road length of 2,787 feet. Thus soling was not done over 1,113 feet in length. Thirdly, earth work according to the vouchers was 28,741 cft. of which 21,050 cft. was carried away and rest of the excavated stuff was pressed. Some 1,281 feet long road length contained material which was excavated locally. Work started near the Jail to avoid the inconvenience to traffic on election day caused by the dug up gravel road. That is why Ex. 68, dated February 14, 1967, is explicable as to soling for about 300 feet on that day and Ex. A/130 the agreement became effective as from April 1, 1967. Therefore, the High Court wrongly held that the date April 1, 1967, on Ex. A/130 was fictitious because soling was done on February 14, 1967, as will appear from Ex. 68. The judgment totally over-looked that on February 14, 1967, soling was pressed by the road-roller to the extent of 300 feet. The total distance of the road from Jail to Tekri village was 3,389 ft. Out of this length 3,000 ft. soling was pressed on April 12, 1967. That is proved by Ex. 67 log-book entry dated April 12, 1967. Details of road-roller work given in Ex. 67 show that the engine worked on the road for about 3 1/2 days for pressing soling and consolidating ballast.

25. The relevant Financial and Accounts Rules Nos. 330, 351 and 369 indicate that the officers could give to different contractors a number of contracts relating to one work even though such work might be estimated to cost more than the amount up to which they are empowered to accept the tenders and distinction is made between piece-work and contract work. Piece-work is that for

which only a rate is agreed upon without reference to the total quantity to be done. Work below Rs. 2,500/- in value is termed as petty-work. Exs. A/128 and Ex. A/130 would come in the category of petty-work. Petty-work did not require estimates nor tenders according to Rules 330 and 351 respectively. The Tekri road was constructed under special repairs programme.

26. The High Court held that the construction of the road at Tekri was in contravention of Section 72 of the Rajasthan Urban Improvement Act. This point was not raised in the pleadings. Section 72 of the said Rajasthan Act speaks of restrictions on improvement in certain areas after the coming into operation in any area of a master plan or notification of the sanction of a scheme. The scheme is not in evidence. The evidence about Hiran Magri Scheme does not prove that Tekri road was constructed in contravention of any scheme. Hiran Magri Scheme Ex. 78 is divided into 14 Sectors. Tekri does not fall in any one of them. It is in evidence that on January 31, 1967, the Advisory Council met for preparation of a master plan. Section 2(1)(i) of the said Rajasthan Act speaks of amenity as including a road and Section 2(1)(vi) speaks of improvement meaning operations over or under land. A road cannot be an improvement and therefore Section 72 of the Act may not apply. These matters appear to be beside the principal point for consideration as to whether there was any meeting and whether the respondent Sukhadia told the voters who were mostly Gujars that if they did not vote for the appellant then the Kachha road in their locality would never be metalled.

27. The High Court held that there was no evidence that it was the respondent Sukhadia who got the work on Tekri road started by Chhail Behari Mathur. The High Court further held that there was no evidence of bargain for Voting at the election. The witnesses Phoolla P.W. 25 and Madan Lal P.W. 28 who were examined to prove that the respondent made a bargain with the people of Tekri village that they would vote for him and he would get a road constructed in Tekri village were disbelieved by the High Court. The entire evidence has been examined by the High Court and there was no evidence of bargain. That finding is correct and we do not find any reason to take a contrary view. The various records about the construction of Tekri road indicate that this was a long standing grievance. If a roller was used on the date of the election that should not be interpreted to mean that the Chief Minister was utilising his position to obtain votes. Such a view would suspend and paralyse normal activities of the State. We agree with the High Court that there was no corrupt practice.

28. With regard to the construction work at Tekri, counsel for the appellant emphasized three features, namely, that this was not the respondent Sukhadia's portfolio; secondly, that the construction work was in breach of law, that the Urban Improvement Trust should have done work; and thirdly, work commenced immediately after the visit of respondent Sukhadia and it was completed before the polling date without estimates, without sanction and without funds. These three features were said in combination with the oral evidence of Phoolla P.W. 25 and Madan Lal P.W. 28 to be full and complete evidence of the election bargain of respondent Sukhadia to obtain votes. We have earlier referred to the agreement for earth-work for construction of road at Tekri village. The work continued up to the month of May, 1967. The road had been planned as early as 1966. It is not correct to say that there was no sanction for the work. There was standing yearly contract of supply of stones and ballast. Earth-work was done under different agreements. Measurement-books and vouchers have been produced and the total value of the work was calculated to cost Rs. 20,000/-. Approximately Rs. 18,000/- was spent. There were two piece-work agreements Ex. A/128 and Ex. A/130. In addition there were items of petty-work. Petty-work did not require any estimate. We have also referred to the relevant rules and held that there was no contravention. The High Court correctly rejected the evidence of Phoolla and Madan Lal and came to the conclusion that there was no evidence of bargain for election.

29. The third corrupt practice alleged by the appellant was in connection with the covering of Nallah in Baluchistan Colony. The appellant alleged in Paragraph 8 of the amended petition that the respondent Sukhadia, his election agent, other agents and other persons with the consent of the respondent Sukhadia misused his position as Chief Minister and ordered the Public Works Department to construct roads and Nallah inter alia at Ward No. 27 in Baluchistan Colony. The appellant alleged that respondent Sukhadia visited that colony and induced the voters to vote for him and in turn promised to get the construction of the Nallah done in their colony. It will appear from Ex. A-31, dated September 30, 1966, that the scheme for covering of Baluchistan Colony Nallah came into existence at the instance and because of the keen interest taken in the matter by the Health and Central Committee of the Municipal Council, Udaipur. There was a resolution of the Sanitary and Health Committee, dated August 27, 1966, Ex. A-28 where it is recorded that unfortunate incidents took place at the Nallah because children fell into the Nallah and cattle also fell in the Nallah and there was insanitary condition.

30. There are many documents between the years 1966 and 1967 pointing about the unsatisfactory and unhygienic condition of the Nallah. In the month of December, 1966, the Urban Improvement Trust noticed that the Government had refused subsidy for the covering of the Nallah and request for loan was made and proportionate contribution was expected to be made by the Municipal Council and the Irrigation Department. The Chairman, Urban Improvement Trust, in Ex. A-34, dated January 19, 1967, wrote to the Secretary, Town Planning Department, intimating that the work of the Nallah was being started in anticipation of the Government sanction. In Ex. 65 (252), dated January 30/31, 1967, the Secretary, Town Planning, wrote to the Chairman, Urban Improvement Trust, that it would not be possible for the Town Planning Department to spare the money but he would ask the Chief Engineer. Health, and the matter should be discussed with the Town Planning people. The Chairman in his oral evidence explained that he was quite surprised to see the letter. Ex. 7-A is a telegram dated February 10, 1967. There are various office notes on the Secretariat file being Exs. 253, 254, 255, 256, 257 and 266. In the month of February, 1967, the office notes were sent to the Municipal Local Self-Government. It appears that the Financial Commissioner did not at first accord his approval to the loan. The Financial Commissioner accorded sanction on February 24, 1967, (Ex. 256). The office note of the Urban Improvement Trust on March 6, 1967, proposed that the matter might be placed for administrative and technical sanction and also for the acceptance of the tender. Formal sanction Ex. A-35 was made on March 31, 1967. In that sanction reference is made to the letter Ex. A-34, dated January 19, 1967, and a telegram Ex. 7-A, dated February 10, 1967. This telegram was described by the High Court as "faked" because there was then no sanction. The High Court was wrong in describing the telegram in that manner. The telegram Ex. 7-A, dated February 10, 1967, was sent by the Secretary to the Collector and Chairman of the Improvement Trust. Ex. 266, dated February 10, 1967, is an office note to the effect that the Chairman, Town Planning, had gone to Udaipur and was asked to discuss the case regarding Nallah in Baluchistan Colony with the Chairman, Urban Improvement Trust. Ex. 253, dated February 11, 1967, is another office note stating the recommendation for grant of loan was sent for approval to the Financial Commissioner. All these documents read in proper sequence would indicate that Ex. 7-A was a genuine telegram, in anticipation of sanction. The Financial Commissioner did not at first agree to accord his approval to the loan. The Secretary, Town Planning, again moved the Financial Commissioner for accorded sanction on February 24, 1967 (Ex. 256). The Minister gave his assent to the sanction of the loan on March 2, 1967. On March 6, 1967, the matter, according to the office note, was placed for administrative and technical sanction and for acceptance of the tender. On March 31, 1967, formal sanction was given vide Ex. A-35. It appears that the covering of the Nallah in Baluchistan Colony was not an extraordinary or abnormal

affair. It may be stated here that respondent Sukhadia resigned from his office on March 13, 1967, and President's Rule was imposed, which continued till April 26, 1967. The sanction was given at a time when respondent Sukhadia was not in office. A revised sanction was made on June 27, 1967 (Ex. A-38). Tenders for covering of the Nallah had been asked for by Ex. A-39, dated December 29, 1966.

31. Ex. 109 is an address presented to the respondent Sukhadia on behalf of the refugees of Baluchistan and Jacobabad Colonies at a public meeting at Salatia Grounds on February 5, 1967. This address does not make any reference to the covering of the Nallah. If the respondent Sukhadia had made any promise to that tenor on January 31, 1967, or prior to February 10, 1967, it would have found mention in the address.

32. The Urban Improvement Trust had one part-time Executive Engineer, Chhail Behari Mathur. His real job was that of Executive Engineer, P.W.D., Udaipur. The decisions in the Urban Improvement Trust were usually taken by the Chairman and the Executive Engineer. The appellant in his oral evidence said that when he was Vice-President of the Municipality and also a member of the Urban Improvement Trust, it was felt necessary to cover the Nallah. The proceedings of the Urban Improvement Trust in the year 1966 will show such course of action to be correct. The Urban Improvement Trust Resolution of September 21, 1966, stated that money was being arranged for and would be forthcoming before the liability arises. Rule 375(a) of the Public Works Department Financial and Accounts Rules inter alia states that until an assurance has been received from the authority competent to provide funds work could be undertaken because such funds will be allotted before the liability matures. If the Urban Improvement Trust had to spend a sum over and above the budgeted provision in the course of the year a supplementary budget was to be passed. Again Rule 375(b) it is stated that whether on ground of urgency or otherwise if an officer is required to carry out a work for which no appropriation exists, the officer is directed to intimate to the Accountant General when he is incurring a liability in which no appropriation has been made in the budget. Therefore, an officer incurring the expenditure will take immediate steps by addressing the appropriate competent authority to obtain orders either to stop work or regularise its execution. That is why, K. K. Joshi, Chairman of the Urban Improvement Trust, informed on January 19, 1967, that he was starting the work in anticipation of Government sanction (see Ex. A-34).

33. Inviting tenders could not have been postponed to a date when the loan came in hands of the Urban Improvement Trust. When tenders were opened on January 17, 1967, the tender of Sangneria Brothers was the lowest and it was orally accepted. The actual contract was entered into after the Urban Improvement Trust gave formal sanction on April 13, 1967. The Urban Improvement Trust framed its own schemes. "Expenditure sanction" is not required in the Urban Improvement Trust because Resolution for work would amount to sanction in anticipation of allotment of funds. Rule 318 of P.W.D. Rules requires that the proposals are structurally sound and estimates are accurately calculated. Chhail Behari Mathur prepared the Scheme, estimates, designs and plans. He was the highest technical person in the Urban Improvement Trust. When Urban Improvement Trust decided to execute the Scheme it looked for money. The Local Self-Government Secretary on January 8, 1967, awarded the loan. The Town Planning Department approved the Scheme. The approval meant approval for raising the money. The Secretary, Town Planning Department, was also the Secretary of the Local Self-Government Department. The Local Self-Government Department, Town Planning, and Public Health Department really formed one Unit in the Secretariat. Though tenders were opened on January 17, 1967, formal contract was signed after the date. Though the work had started in February, 1967, it was stopped for some time. The work order was dated March 29, 1967, and the work was completed on November 28, 1967. The tender

notice gave 8 months for completion of work. There was a conference at the Secretariat between the Chief Town Planner, Secretary and Deputy Secretary of the Town Planning Department on February 10, 1967. They decided to sanction Rs. 60,000/- out of Land Acquisition and Development Fund. Therefore, as far as the loan was concerned the Department had only to obtain the concurrence of the Finance Department. The Accounts Officer therefore sent a telegram Ex. 7-A that sanction was accorded for loan and formal sanction would follow. Rule 50 of the General Financial and Accounts Rules states that where it is desired to sanction expenditure before the funds have been communicated, the authority proceeds in a cautious manner by stating : "subject to the funds to be communicated in the budget of the year". The Accounts Officer was careful in indicating that a telegram was not a formal order for sanction and something was yet to be done. The ultimate sanction was issued on March 31, 1967. The Urban Improvement Trust on April 15, 1967, paid the first running bill amounting to Rs. 52,466.60.

34. On the entire evidence it was apparent that there was urgency of the work. The Municipality felt the urgency. The resolution of the Municipality Ex. A-28 asked the Urban Improvement Trust to act forthwith in the matter of covering of the Nallah. When the Scheme Ex. A-31 was sent to the Town Planning Department, copy was sent to the Chief Minister as well as the Law Minister. This was between the months of September and November, 1966. Reminder was sent in the month of January, 1967 to the Chief Minister. The respondent Sukhadia said that the scheme was brought to his notice. Sometime in the month of December, 1966 the respondent Sukhadia pointed out to the Chief Engineer, Health, about the bad condition of the Nallah and expressed desire for improvement. It, therefore, follows that the respondent Sukhadia was shown the scheme once in the month of December, 1966, and the only observation made by him was that there should be improvement. This was ordinary official duty done by the respondent Sukhadia. It is impossible to impute any motive whatsoever to the respondent Sukhadia that he was guided by any corrupt motive for any election bargaining.

35. When the Urban Improvement Trust was trying to get revival of the lapsed sanction in the month of June, 1967, the matter again came to the respondent Sukhadia. This was too far removed from the election date to have any connection or relevance therewith.

36. It was suggested that file Ex. 247 was tampered and that a small slip had been pasted between note 113 and not 114. The word 'issued' is written on that slip. Before the slip was pasted the words were "draft vetted D. S. may also see as it is important matter". The contents would show that the draft was "vetted" and the note was irrelevant and this was again in the month of January, 1967 long before the election. So, the pasting of the slip was also an ordinary routine affair. In cross-examination of the respondent Sukhadia it was suggested that the words below the slip were "as desired by Chief Minister on phone sanction may be accorded". The words can be seen on the original and the suggestion is baseless.

37. The appellant's allegation against the respondent Sukhadia as to installation of public water-taps is based on Paragraph 11 of the amended petition. The appellant alleged that the respondent by exercising his influence as Chief Minister got 50 public water-taps installed in different localities of Udaipur City Constituency two or three days before the poll. The respondent did not admit the allegations. The High Court came to the conclusion that the documentary evidence on record did not warrant a finding that the respondent got the public hydrants installed by the exercise of his influence. We have not found any reason to hold that the High Court was in error.

38. The last allegation on which the appellant relied as an instance of corrupt practice was Ex. 6.

which was a leaflet. The leaflet contained a statement "The Vice-President of Jan Sangh Shri Bhanu Kumar Shastri took illegal possession of Government land in Shivaji Nagar by force and left a road of 9 ft. width only". It was said that the statement of fact related to the personal character and conduct of the petitioner and was, therefore, an offence within the meaning of Section 123(4) and Section 100(b) of the Representation of People Act. The High Court held that the statement of fact contained in Ex. 8 that Bhanu Kumar Shastri encroached on Government land and constructed his house at Shivaji Nagar was false and the respondent Sukhadia believed the statement to be false. The High Court also held that the statement related to the personal character of Bhanu Kumar Shastri but it was not reasonably calculated to prejudice the prospects of his election and the leaflet was not printed or distributed with the consent of the respondent Sukhadia or his election agent. Counsel for the appellant relied on the evidence of Bhagwati Lal Bhat and Girdhari Lal Sharma to contend that the respondent was responsible for the printing. Bhagwati Lal Bhat is R. W. 36 and Girdhari Lal Sharma is R. W. 2. Bhagwati Lal Bhat said that he was Secretary, District Congress Committee, Udaipur, at the relevant time and he used to get leaflets printed for election propaganda. He also said that he got Ex. 8 printed at Krishna Printing Press and Madho Lal agent of Bhuleshwar Mina asked him to get the same printed. Girdhari Lal Sharma was the election agent of respondent Sukhadia. He said that work for the respondent Sukhadia and Bhuleshwar Mina, who was a Parliamentary candidate from the same constituency, was carried on from the same office. Girdhari Lal Sharma used to draft leaflets and pamphlets which were published for the election campaign of the respondent Sukhadia. Madho Lal used to get leaflets and pamphlets for the election campaign of Bhuleshwar Mina Printed. The election propaganda by the District Congress Committee according to Girdhari Lal Sharma was in the charge of Bhagwati Lal Bhat.

39. Counsel for the appellant invited us to hold on the evidence that Ex. 8 was printed by the respondent Sukhadia's election agent and with his consent. The appellant in his oral evidence said that the respondent Sukhadia got Ex. 8 printed at the press of his election agent, Girdhari Lal. It was not alleged in the petition that the respondent or Girdhari Lal got the leaflet printed.

40. Neither in the petition nor in evidence, knowledge or consent of Girdhari Lal is alleged about printing the pamphlet Ex. 8. Girdhari Lal said that he came to know of the leaflet only after he had received a copy of the election petition. This was not challenged in cross-examination of Girdhari Lal nor was it suggested that the printing of the pamphlet was done at his press with the knowledge or consent of Girdhari Lal. The only allegation in the petition was that the leaflet was published in the Krishna Printing Press of Girdhari Lal. Girdhari Lal also said that he did not sit at his press in the months of December, 1966 and January and February, 1967. Girdhari Lal's Manager, Babu Lal used to maintain the accounts and look after the business of the press during those months. It was never suggested to Girdhari Lal that the leaflet was printed with his knowledge or consent. Bhagwati Prasad Bhatt and Madho Lal gave evidence on behalf of the respondent. Bhagwati Prasad said that the leaflet was printed by him for the District Congress Committee. The High Court correctly held that neither the respondent nor his election agent, Girdhari Lal, got the leaflet Ex. 8 printed or gave consent to its being printed and further that it could not be held that the respondent or his agent had knowledge of the distribution of the leaflet.

41. As to distribution of the pamphlets, the appellant originally mentioned no particular persons as distributors but after amendment, three persons, namely, Hanuman Prasad, Bhagwati Prasad Bhat and Isthiak Ahmed were mentioned as distributors. There is no evidence that Girdhari Lal distributed the leaflet.

42. In Paragraph 15 of the petition, the appellant alleged that the respondent addressed meetings at

Dholi Basri and Moti Chohtta on February 10, 1967, where the respondent orally made defamatory statement about the appellant making an encroachment upon the Government land. Narain Lal and Shanker Singh gave evidence to behalf of the appellant and said that respondent in their presence made the statement that the appellant had constructed a house on Government land. The High Court did not accept the oral evidence on behalf of the appellant. Counsel for the appellant submitted that though the respondent denied that he held a meeting a Dholi Basri and Moti Chohtta on February 10, 1967, there was mention of meetings at those places in the police report. The High Court held that the respondent might have contacted the people at the places mentioned but rejected the respondent's version that the respondent said that the appellant had encroached upon the Government land. We do not see any reason to take a different view.

43. Counsel on behalf of the appellant contended that it was not open to the respondent to challenge several findings of fact by the High Court against the respondent without preferring an appeal. Sections 116-A, 116-B and 116-C of the Representation of the People Act deal with appeals, stay of operation of the order by the Court and procedure in an appeal respectively. Under Section 116-A, appeals shall lie to this Court on any question whether of law or fact from every order made by the High Court under Section 98 or Section 99 of the Representation of People Act. Sections 98 and 99 speak of orders on the election petition. Section 98 speaks of orders dismissing the election petition or declaring the election to be void or declaring the election of a returned candidate to be void and the petitioner to have been duly elected. Section 99 speaks of orders recording finding of commission of corrupt practice and names of persons who were guilty of corrupt practice.

Under Section 116-C of the Representation of People Act the procedure in an appeal is that subject to the provisions of the Act and of the Rules, if any, made thereunder every appeal shall be heard and determined by this Court as nearly as may be in accordance with the procedure applicable to the hearing and determination of an appeal from the final order passed by a High Court in the exercise of its original jurisdiction and of the provisions of the Code of Civil Procedure and the Rules of the Courts shall as far as possible apply in relation to such appeal. There are no rules of this Court which have any bearing on this matter. The provisions contained in Order 41, Rule 22 of the Code of Civil Procedure are attracted by the words of Section 116-C of the Representation of the People Act with the result that the respondent may support the decision and judgment on any ground decided against him. This Court in *Ramanbhai Ashabhai Patel v. Dabhi Ajitkumar Fulsinji and Others*, (1965) 1 SCR 712 negatived the contention that the respondent was not competent to challenge the correctness of a finding as he had not preferred an appeal and said "we cannot lose sight of the fact that normally a party in whose favour the judgment appealed from has been given will not be granted special leave to appeal from it. Considerations of justice, therefore, require that this Court should in appropriate cases permit a party placed in such a position to support the judgment in his favour even upon grounds which were negatived in that judgment".

44. In the recent case in *T. N. Angami v. Smt. Ravalu Reno N. Shaiza* (Civil Appeal No. 1125 of 1970) this Court in the judgment dated January 21, 1971, reiterated the views expressed in the case of *Ramanbhai Ashabhai Patel* (supra).

45. There is an additional reason for allowing the respondent to support the judgment even on findings against the respondent, especially when it appears that the High Court has not taken into consideration the entire documentary and oral evidence in arriving at a finding. If the High Court has overlooked important and crucial documents or oral evidence, such evidence will justify this Court to support the contentions of the respondent that the findings of fact arrived at by the High Court are against clear and cogent proof of facts. This Court will, therefore, be justified in recording

the correct findings on ample and abundant materials which have been overlooked and ignored by the High Court. In present case, we have had occasion to deal with these aspects on the rival contentions and recorded our findings.

46. It was said on behalf of the appellant that under Section 123 of the Representation of People Act, bargain was not necessarily an ingredient of corrupt practice of bribery. The onus of proof of corrupt practice is on the appellant. Allegation of corrupt practice is of a serious nature.

47. In *Ghasi Ram v. Dal Singh and Others*, (1968) 3 SCR 102 and *Om Prabha Jain v. Abhash Chand and Another*, (1968) 3 SCR 111 this Court considered acts of Ministers, who were candidates at elections in relation to using discretionary fund on the eve of the election. Two propositions were established. First, "the position of a Minister is difficult. It is obvious that he cannot cease to function when his election is due. He must of necessity attend to the grievances, otherwise he must fail. He must improve the image of his administration before the public. If everyone of his official acts done bona fide is to be construed against him and an ulterior motive is spelled out of them, the administration must necessarily come to a stand still.... With an election in the near future, the political party had to do acts of a public nature. The grants of discretionary grants (sic) were part of the general scheme to better community development projects and to remove the immediate grievances of the public. The money was required to be spent in 3 months' time. The action of the Minister had often the concurrence and recommendations of his subordinate staff. It is for this reason that the orders about the improvement of the supply of waters were not pressed. They were incapable of being construed against the first respondent. Therefore, emphasis was placed upon "the distribution of money". Second, "To arrange to spend money on the eve of elections in different constituencies although for general public good, is when all is said and done an evil practice, even if it may not be corrupt practice. The dividing line between an evil practice and a corrupt practice is a very thin one. It should be understood that energy to do public good should be used not on the eve of elections but much earlier and that even slight evidence might change this evil practice into corrupt practice. Payment from discretionary grants on the eve of elections should be avoided".

48. Allegation of corrupt practice is a charge of criminal nature. The provisions in the Representation of People Act are intended to preserve the purity of the election, but at the same time these provisions should not be subverted for the impure purposes of maligning candidates who happen to be in the Government on the eve of the election. The normal bona fide acts of persons who happen to be Ministers have to be kept separate from abuse of the opportunities of power and resources which are not available to their opponents.

49. Under Section 123(i) of the Representation of the People Act, bribery is said to be a gift, offer or promise by candidate of any gratification to any person with the object directly or indirectly of inducing an elector to vote at an election. The ingredients of bribery are, therefore, first gift or offer or promise of gratification to an elector, second, the gift or offer or promise of gratification is for the direct or indirect purpose of inducing an elector to vote. It was said on behalf of the respondent that If Ministers on the eve of the election render public or social service by redressing grievances of the public in relation to construction of roads or installation of water-taps or closing of insanitary drains or pits, these acts should not be interpreted to be either gift or offer or promise of gratification. It is difficult to lay down an abstract proposition. Ordinarily amelioration of grievances of the public appears to be innocuous. If, however, there is evidence to indicate that any candidate at an election abuses his power and position as a Minister in the Government by utilising public revenues for conferring advantage or benefit on a particular group of people for the purpose of obtaining their votes, different considerations will arise. The Court is always vigilant to watch not

only the conduct of the candidates and to protect their character from being defamed but also to see that the character and conduct of the public is not corroded by corrupt motive or evil purposes of candidates. The genuine and bona fide aims and aspirations of candidates have to be protected on the one hand and mala fide abuse and arrogance of power will have to be censured on the other.

50. Judged by the tests laid down in these decisions it has to be found out as to whether the respondent Sukhadia did any act which can be construed to be out of the ordinary or with a view to entering into an election bargain with the voters. In all the three instances relied on by the appellant at Raigar Colony, Tekri and Baluchistan Colony, it is manifest that there were long-standing public grievances and the Government from time to time made suggestions and recommendations for redress of the grievances and amelioration of the condition of the people. It cannot be said that on the eve of the election there was any sudden or spontaneous out-burst of public activity in the shape of diverting public money to win electors on the side of the respondent Sukhadia by throwing baits or giving them any particular and specially favoured treatment.

51. For these reasons we are of opinion that the appellant is not entitled to succeed. The appeal fails and is dismissed. Parties will pay and bear their own costs.

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