

S. Harcharan Singh

Vs

Sajjan Singh and Others

Civil Appeal No. 3419 (NCE) of 1981

(Sabyasachi Mukharji, Syed M. Fazal Ali, A. Varadarajan JJ)

29.11.1984

JUDGMENT

SABYASACHI MUKHARJI, J. -

1. The appellant and the respondents contested the election to Punjab Legislative Assembly held in May 1980 from Muktsar Constituency. Polling was held on May 31, 1980 and the result was declared on June 1, 1980 in which the appellant secured 29,600 votes and respondent 3 secured 30,003 votes. The other candidates got only nominal votes. There was thus a difference of 403 votes in favor of respondent 3. Respondent 3 was declared elected. The election of respondent 3 was challenged by an election petition alleging that respondent 3 had indulged in corrupt practice in the said election and as such his election was liable to be set aside and he was liable to be disqualified for corrupt practice. Corrupt practice makes the election liable to be set aside under Section 100(1)(b) of the Representation of the People Act, 1951, hereinafter called the Act which is as follows :

100. Grounds for declaring election to be void - (1) Subject to the provisions of sub-section (2) if the High Court is of opinion

##(a) * * *##

(b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or

2. What are deemed to be corrupt practices are indicated in Section 123 of the Act. Sub-section (3) of the said section is as follows :

The appeal by a candidate or his agent or by any other person with the consent of a candidate or his election agent to vote or refrain from voting for any person on the ground of his religion, race, caste, community or language or the use of, or appeal to religious symbols or the use of, or appeal to, national symbols, such as the national flag or the national emblem, for the furtherance of the prospects of the election of that candidate or for prejudicial affecting the election of any candidate :

Provided that no symbol allotted under this Act to a candidate shall be deemed to be a religious symbol or a national symbol for the purposes of this clause.

3. It may be mentioned that before the Amendment Act, 40 of 1961, effected on September 12, 1964 sub-section (3) of Section 123 of the Act was as follows :

The systematic appeal by a candidate or his agent or by any other person, to vote or refrain from voting on grounds of caste, race, community or religion or the use of, or appeal to, religious symbols or the use of, or appeal to, national symbols, such as the national flag or the national emblem, for the furtherance of the purpose of that candidate's election.

4. As a result of this amendment, inter alia, the expression 'systematic' has been deleted and only 'appeal' by a candidate or his agent or by any other person with the consent of the candidate or his election agent to vote or refrain from voting for any person on the ground of his religion, race, caste, community or language continues to be corrupt practice. The Statement of Objects and Reasons for introducing amendments in Sections 123, 125, 139 and 141 of the Act in 1961 stated, inter alia, as follows :

For curbing communal and separatist tendencies in the country it is proposed to widen the scope of the corrupt practice mentioned in clause (3) of Section 123 of the 1951 Act and to provide for a new corrupt [see sub-sections (3) and (3-A) of Section 123] and a new electoral offence for the promotion of feelings of hatred and enmity on grounds of religion, race, caste, community or language (see new Section 125).

5. Therefore even a single appeal by a candidate or his agent or by any other person with the consent of the candidate or his election agent to vote or refrain from voting for any person on the ground of his religion, race, caste or community etc. would be corrupt practice.

6. The allegations against respondent 3 were that he, his election agent and other person with his consent had appealed to the voters of the constituency in the name of religion, namely Sikh religion for voting in his favour or to refrain from voting in favour of the appellant. In brief it is alleged that Hukamnamas, the nature, the content and the effect of which we will examine later, were issued urging the voters to vote for respondent 3 and not to vote for the appellant. It was further alleged that in the meetings, inter alia, at Muktsar, (2) Khokhar and (3) Harika Kalan speeches were delivered by eminent public persons appealing to the voters that as respondent 3 was the candidate of the Akal Takht and his nomination was supported by the Hukamnama of Akal Takht, the propeller should vote for him and not to vote for him would be against the tenets of the Sikh religion and would be a blasphemous act against the Sikh religion. In publications like Akali Times where the same view was propounded and it was indicated that Indira Congress was always against Sikh people and Sikh religion and as such to vote for them would be vote against Sikh religion, were pointed out at the meetings. It was emphasised before us that a Hukamnama for a Sikh is of great consequence and disobedience to Hukamnama entails great misfortune. It is necessary, however, to examine in detail the actual evidence adduced in support of these allegations. The learned Judge of the High Court of Punjab and Haryana on an analysis of the nature of the Hukamnama as well as examination of the evidence adduced before him came to the conclusion that neither was it established that respondent 3 had appealed in the name of religion in terms of Section 123 of the Act nor was the learned Judge convinced about the veracity or the correctness of the evidence adduced on behalf of the appellant as to what happened in the three meetings. The learned Judge accordingly came to the conclusion that the appellant had failed to prove the corrupt practice alleged against respondent 3. The learned Judge emphasised that allegations of corrupt practices in an election petition are in the nature of quasi-criminal charges and must be proved beyond reasonable

doubt as such. The learned Judge was of the opinion that the appellant had not succeeded in proving the said charges beyond reasonable doubt. He accordingly dismissed the said election petition.

7. Being aggrieved by the said decision and judgment of the learned Judge, this appeal has been preferred by the appellant under Section 116-A of the said Act.

8. Before we examine the actual contentions and the evidence, it may be appropriate to bear in mind the principles enunciated in two decisions of this Court on the principle underlying Section 123(3) of the Act.

9. *Ambika Sharan Singh v. Mahant Mahadeva and Giri* ((1969) 3 SCC 492) was an appeal against the order of the High Court of Patna declaring the appellant's election from Barhara Assembly constituency, Bihar, void under Section 100(1) of the Act. At the time of the general election in February 1967, the appellant was the Minister of State in the Finance Department of the State of Bihar. There were in all eight candidates contesting from Barhara Constituency. The poll day was February 15, 1967. Having obtained 21,791 votes against 20,243 votes obtained by respondent 1, the appellant was declared elected.

10. In the election petition filed by respondent 1 thereafter, he made a number of allegations of diverse corrupt practices giving particulars thereof in more than ten schedules. The appellant denied all these allegations and filed a recriminatory petition under Section 97 of the Act. The High Court after examining the evidence held the appellant guilty of three corrupt practices, namely of distributing money to Harijan voters in various villages as bribery, of having canvassed on the basis of his caste, namely, Rajput, and of having procured the assistance of four gazetted officers named therein. We are concerned with the second corrupt practice alleged i.e. having canvassed on the basis of his caste. Before this Court, the question involved was whether the High Court was correct in holding the appellant guilty of three corrupt practices. The High Court after considering the evidence held *inter alia* that there was sufficient evidence to show that the campaign on the basis of caste was carried on at numerous places and at some places by appellant himself and at some places by others in his presence and at others by several workers of the appellant including his election agent. The High Court felt that the conclusions was inevitable that all this was done with the appellant's consent, direct or implicit. This Court held that the High Court was right in its conclusion and the appellant was proved to have committed corrupt practice falling under Section 123(3) of the Act. Dealing with the allegations of appeal in the name of religion, this Court observed at page 497 of the report in paragraphs 12 and 13 thus :

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

the evidence of witnesses however numerous should not have been accepted.

Para 13 - But where the allegation is that such canvassing was widespread and at several places it would be impracticable to call upon the election petitioner to give the names of persons alleged to have been approached with such an appeal and the actual words spoken to each of them. If such an appeal is made, for instance, at a meeting it would be difficult for a witness to name those to whom such an appeal is made. It is for this reason that courts in England have made a distinction between bribery to voters and treating them. In the latter class of cases, names of persons treated by the candidate have not been demanded though the election petitioner would be ordered to specify the character and extent of the alleged corruption. This is so even though the English law of elections emphasises the individual aspect of the exercise of undue influence, whereas what is material under our law is the commission of an act which constitutes corrupt practice. (See Halsbury's Laws of England, third ed., volume 14, p. 278). A command by a religion head to his followers that it was their primary duty to support a particular candidate was held sufficient to vitiate the election and it was not considered necessary to have the names of the persons to whom the command was addressed.

11. In the case before this Court there were other contentions impeaching the evidence and indicating the improbabilities of the case against the appellant. This Court after elaborate discussion came to the conclusion that the allegation of appealing in the name of religion namely appealing on the basis of caste was proved in the facts and circumstances of that case. It was argued that Barhara constituency was a composite constituency and therefore if the appellant and his agent were to campaign on caste basis, those belonging to other castes would be alienated against him and as such an appeal instead of advancing his cause would prove detrimental to it. This Court found this submission to be untenable because it is not impossible that the candidate inclined to campaign on the caste basis would concentrate on his votes and at the same time leave his party propaganda machine to campaign amongst the rest of the population. It would not, therefore, be correct to say that such a campaign would be improbable and therefore evidence that such canvassing was concluded should have been rejected.

12. In the instant case before us, similar contentions were urged namely Muktsar was a mixed constituency namely there were Hindu votes and Sikh votes, according to one calculation practically divided equally. It was submitted that appeal in the name of Sikh religion by the appellant in such a situation was unlikely. As mentioned in the aforesaid decision of this Court, if there is conclusive evidence to that effect, then such a theory would not outweigh the facts proved. It was, then, submitted that Akali Party was in alliance with CPI(M) and it was most improbable that when one of the allied parties was a Marxist Party, the candidate of Akali Dal would appeal in the name of religion. This for the reasons indicated before is also not an acceptable view. These are only probabilities of a situation but if there is direct evidence of propaganda or campaign by candidate in the election in the name of religion, the probabilities of such a campaign not being made in view of other surrounding circumstances, cannot outweigh the direct evidence if the Court is otherwise inclined to accept such direct evidence.

13. In *Ziyauddin Burhanuddin Bukhari v. Brijmohan Ramdass Mehra* (1975 Supp SCR 281 : (1976) 2 SCC 17), the appellant, a candidate of Muslim League defeated respondent 3, Socket Chagla, the Congress candidate in the Maharashtra State Assembly Election. Respondent 1, a voter filed an election petition, inter alia, alleging that the appellant had appealed to the voters to refrain from

voting for respondent 2 on the ground of religion and that the appellant had promoted feelings of enmity or hatred between different classes of citizens of India on ground of religion.

14. The various appeals to the voters on the ground of religion made by the appellant had been set out in different sub-paragraphs. It is not necessary to set out in detail the actual allegations made in that case as these were relevant for the purpose of that case only. It may however be pointed out that it was stated about Chagla that "at the moment we are in such a war in which our opponent is such a person who is playing with our religion affairs, he considers us to be a community whose conscience is dead". It was further alleged that Chagla's wife Nalini was a Hindu and his son Ashok Chagla used to attend the mosque as well as the temple and he should be excluded from Muslim localities. It was further alleged that he was neither a good Hindu nor a true Muslim so neither God nor Bhagwan was pleased with him.

15. It was observed by this Court that our Constitution-makers intended to set up a Secular Democratic Republic. Our political history made it particularly necessary that the basis of religion, race, caste, community, culture, creed and language which could generate powerful emotions depriving people of their powers of rational action should not be permitted to be exploited lest the imperative conditions for preservation of democratic freedoms were disturbed. Section 123(2) and (3) and (3-A) was enacted to eliminate from the electoral process appeals to those divisive factors which arouse irrational passions that run counter to the basic tenets of our Constitution. Due respect for the religion beliefs and practices, race, creed, culture and language of other citizens is one of the basic postulates of our democratic system. The line has to be drawn by the court between what is permissible and what is prohibited after taking into account the facts and circumstances of each case interpreted in the context in which the statements or acts complained of might have been made. The court has to examine the effect of the statements made by the candidate upon the minds and feelings of the ordinary average voters of this country.

16. This Court in that decision reiterated at page 297 (SCC p. 32, para 44) of the report as follows:

The Secular State, rising above all differences of religion, attempts to secure the good of all its citizens irrespective of their religious beliefs and practices. It is neutral or impartial in extending its benefits to citizens of all castes and creeds. Maitland had pointed out that such a State has to ensure, through its laws, that the existence or exercise of a political or civil right or the right or capacity to occupy any office or position under it or to perform any public duty connected with it does not depend upon the profession or practice of any particular religion. Therefore, candidates at an elections to a Legislature, which is a part of "the State", cannot be allowed to tell electors that their rivals are unfit to act as their representatives on grounds of their religious professions or practices. To permit such propaganda would be not merely to permit undignified personal attacks on candidates concerned but also to allow assaults on what sustains the basic structure of our Democratic State.

17. Keeping in background these principles, it would be necessary to refer to the allegations, the evidence and the conclusions of the High Court on this point in order to decide this appeal. It was alleged that Hukamnama was issued by Shri Akal Takht on its official letter-head bearing its religious symbol and seal on March 1, 1980, according to which the Working Committee of the Akali Dal was dissolved and a 7-member Ad hoc Committee was appointed under the Chairmanship of Sant Harchand Singh Longowal which was conferred with the full powers of Akali Dal. Shri Akal Takht is situated within the precincts of Harmandir Sahib (Golden Temple). Guru Grant Sahib

installed in Harmandir Sahib is brought every day late in the evening to Shri Akal Takht for Sikh Asan. Another Hukamnama, dated October 6, 1979 was issued. Said Hukamnama which is Ex. P and appears at pages 17 and 18 of Part II of the Paper Book stated that in view of the resignations tendered to the Jathedar of Sri Akal Takht, on September 27, 1979, certain decisions were taken. It further stated in one of the items that in view of the coming Parliamentary elections and the unity of the Panth and its high priests, after scrutinising the list of the delegates, they would in their supervision conduct the election of the President of Shiromani Akali Dal. It was publicised to the entire Sikh community that Shiromani Akali Dal should be considered as Supreme in the Panth. It further stated that the legislators elected on the Panth ticket were being instructed to run the Punjab Government unitedly under the leadership of Sardar Parkas Singh Badal, the Chief Minister and maintain the prestige of the Panth. It was further stated that all the members of the Ceremony Committee will have to work unitedly under the leadership of Jathedar Gurcharan Singh Tohra, for the betterment of management of gurdwaras and to speed up the preachings of Sikhism. The said document further stated that a seven-member committee was being constituted for distribution of tickets and adjustments with other parties in the coming Lok Sabha elections. The names of seven members were given which included Sant Harchand Singh Ji Longowal, S. Jagdev Singh Ji Talwandi, S. Parkash Singh Ji Badal and others. Sant Harchand Singh Ji Longowal was appointed as Chairman of the Committee. It further stipulated that the Sikh, who defied the propriety of Akal Takht and offers 'Ardas' would be punished. He should present himself at Sri Akal Takht and get himself absolved and further directed that person opposing the above decision, made for maintaining the unity of the Panth, would be dealt with severely. It is further alleged that on November 16, 1979 Hukamnama was issued by Akal Takht on its official letter-head with religious symbol and seal wherein punishment was imposed by Akal Takht on Jathedar Jagdev Singh Talwandi and Jathedar Umra Nangal. These appear as Ex. P-2 at pages 19 and 20 of Part II of the Paper Book.

18. On February 29, 1980, a letter was written which is Ex. P-3 and appears at page 21 of Part II of the Paper Book. This letter contains the proposal of some leaders of Akali Party about the formation of seven-member Ad hoc Committee and disbanding of the working Committee of Akali Dal. On March 1, 1980 Hukamnama which is Ex. P-4 at page 22 of Part II of the Paper Books was alleged to have been issued by Akali Takht on its official letter-head bearing its religious symbol seal. This Hukamnama gives approval to the aforesaid proposal and made an official announcement that the seven-member Ad hoc Committee would from that date take upon itself all the responsibilities of the Shiromani Akali Dal.

19-20. Respondent 3 states in his evidence that he was not originally a candidate of Akali Dal but his candidate was taken up at a subsequent stage and he was given a ticket by the seven-member committee to contest the election. This is corroborated by Ex. P-29/A because May 2, 1980 was the last date for submitting nomination, and on May 3, 1980, respondent 3 was given ticket by seven-member Ad hoc Committee for Muksar Constituency. See pages 90-92 of Part III of the Paper Book being the statement of Dayal Singh, Shri Dayal Singh gave evidence on behalf of the appellant and he claims to be the Secretary of Akali Dal of which the President was Jagdev Singh Talwandi. According to him Harchand Singh's name was included in the list Ex. P. W. 29/A and not Ex. P-4/1.

21. On May 5, 1980 the last date for withdrawal of candidature expired. On May 14, 1980. election meeting was addressed in village. Thandwala by S. Parkash Singh Badal, a member of the seven-member Ad hoc Committee appointed by the Akal Takht and by respondent 3, the elected candidate. There were articles in Akali Times by Surjit Singh Chief Editor on May 16, 1980. These article

were to the effect that it was a religious commitment for every Sikh to cast his vote for Akali Dal or to the candidate supported by the Akali Dal. One of the statements in the article was that Indira Congress was an anti-Sikh organisation. On May 18, 1980, it was further stated in the said Akali Times that a Sikh cannot be supporter of that organisation and to have commitment with the Congress was a sin against Sikh community's interest.

22. In view of the nature of the points urged in this appeal, it would be appropriate to refer to some portions of the writings in Akali Times which were alleged to have been highlighted at several election meetings by respondent 3. One of the articles is Annexure P-5 which appears at page 23 of Part II of the Paper Book. It is headed thus "A supporter of Indira Congress (I) cannot be a Sikh". It is stated inter alia : "It becomes a religious commitment for every Sikh to treat his vote a property of the Akali Dal and should stick to it by all means. To be a Sikh, is to adhere to the Guru. To follow the Sikhism is not a small thing; it is a gift bestowed by the Almighty Vaheguru. Those, who are admitted into the Sikh fold, they protect this faith even at the cost of their lives." There are certain leaders in the Indira Congress, who look Sikh by appearance. And they, for their selfish and political motives, claim to be Sikhs. There is no dearth of such persons who declare themselves to be the supporters of Punjabi, Punjabi language and its culture, and also they pretend to be protectors of the Sikh interests. Actually they are wolves in sheep's clothing".

23. There were several other articles to that effect which have all been exhibited. It is manifest that propaganda on religious lines was carried on. It is not necessary to set out in detail all the contents of the various articles. As an example one article may be mentioned which was headed as "A Sikh cannot be a supporter of Indira Congress". The article inter alia contained the following :

According to the press reports, the police is harassing Sant Bhinderwala, with the pretext of enquiry. This is being done because the Nirankaries are pressing to harass the Sikh leaders. On the other hand, the threatening letters received in the office of Shiromani Gurdwara Prabandhak Committee, and about which all the Indian newspapers have published reports and which is being condemned by all Sikhs, no leader of the Indira Congress has even spoken about that. On the one hand the highest agency of police, the CBI is conducting enquiry, about the murder of Baba Gurbachan Singh and if the Nirankaries are not satisfied with that, then a special committee is instituted, but on the other hand, the Governor of Punjab Mr Hathi on the instance of Central Government is not going to appeal in the High Court against the murders of thirteen Sikhs. This is such a political policy which means opposition of the Sikh and discrimination against the Sikhism,. I am told many times by my friends that the attitude of the former Prime Minister Mr Morarji Desai was also anti-Sikh. This is true and the Akali Times has many times written about it. But the opposition of Morarji Desai confirms my argument because Morarji Desai also belongs to the same Congress stock to which Indira Gandhi belongs. In case of rule in India there can be many differences between Indira Gandhi and Morarji Desai but their anti-Sikh attitude is common. Mrs Indira Gandhi never tried to prove that she has no enmity with the Sikhs.

With these state of affairs, the Sikhs, living in Punjab and out of it, should think it seriously that their political and religious life can then only be saved if the Akali Dal rules in Punjab. In the coming elections, the support of Indira Congress by any Sikh will be a stab in the back of Sikh interests.

24. It is alleged that on May 24, 1980, respondent 3, the elected candidate, addressed election meetings in villages Khokhar and Harika. Respondent 3 mentioned to the gathering that he was a candidate of Akal Takht. On May 25, 1980, it was further alleged that election meeting was held at Muktsar. This meeting was admittedly addressed by Shri Parkash Singh Badal and respondent 3. There certain statements were made with which we shall deal later.

25. May, 31. 1980 was the date of polling. The result was declared on June 1, 1980. The petitioner/appellant filed the election petition on July 16, 1980 and on October 14, 1980, the petition was dismissed.

26. In support of the contentions in this appeal, it was alleged by counsel that the concept of secular democracy is the basis of the Indian Constitution. The paramount and basic purpose underlying Section 123(3) of the Act is the concept of secular democracy. Section 123(3) was enacted so as to eliminate from the electoral process appeals to divisive factors such as religion, caste, etc., which give vent to irrational passions. It is essential that powerful emotions generated by religion should not be permitted to be exhibited during election and that decision and choice of the people are not coloured in any way. Condemnation of electoral campaigns on lines of religion, caste, etc., is necessarily implicit in the language of Section 123(3) of the Act. Consequently, the section must be so construed as to suppress the mischief and advance the remedy. Legislative history of this section is important from this point of view. The Statement of Objects and Reasons of the Amending Act, 1961 clearly mentions the object of the amendment. It was "for curbing communal and separatist tendencies in the country. It is proposed to widen the scope of the corrupt practice mentioned in clause (3) of Section 123 of 1951 Act and to provide for a new corrupt practice". In order to determine whether certain activities come within the mischief of Section 123(3), regard must be had to the substance of the matter rather than to the mere form or phraseology. The inhibition of Section 123(3) should not be permitted to be circumvented indirectly or by circuitous or subtle devices. The court should attach importance to the effect and impact of the acts complained of and always keep in mind the paramount purpose of Section 123(3) namely to prevent religious influence from entering the electoral field. The nature and consequence of an act may not appear on its very face but the same can be implied having regard to the language, the context, the status and position of the person issuing the statement, the appearance and known religion of the candidate, the class of persons to whom the statement or act is directed, etc.

27. We have to examine the facts of this case in the background of these principles. It was contended on behalf of the appellant that Section 123(3) of the Act had been violated for three different reasons :

(a) Sponsorship of respondent 3 and distribution of election ticket to him for the Assembly elections by the Akal Takht, which is "the supreme religious authority of the Sikhs". (See in this connection statement of PW 25-Giani Pratap Singh at page 69 of Part III of the Paper Book.)

Appeal to religion, says counsel for the appellant, is implicit in the very act of sponsoring of respondent 3 as a candidate at the election by Akal Takht on account of the unique religious position it occupies and the tremendous religious authority and influence it wields amongst the Sikhs.

(b) Issue of Hukamnama (exhibit P-4) by the Jathedar of the Akal Takht in the matter of Assembly elections having regard to the circumstances in which it was issued,

indicates that the approval of the Akal Takht was obtained in order to give this decision a colour of religious authority. (See in this connection the evidence of Giani Pratap Singh PW 25 at page 70 of Part III of the Paper Book.)

(c) It is further urged that appealing to the voters at election meetings held in Muktsar, Khokhar and Harika Kalan by referring to the Hukamnama, to the writings in the Akali Times and exhorting them to vote for respondent 3 by appealing to the religious sentiments and warning them of the consequences of not doing so constitute appeal to religion.

28. As these contentions were not accepted by the learned trial Judge, it would be necessary to analyse the evidence and the reasons of the learned trial Judge for not accepting these in order to determine the contentions urged in this appeal.

29. Whether it was a Hukamnama or not and whether in this case Hukamnama in the proper sense was issued by Shri Akal Takht directing casting of the votes in favour of respondent 3 and if so, what were the consequences of such Hukamnama, are questions that have been canvassed before us. Sub-section (3) of Section 123 prohibits "appeal by a candidate or his agent or by any other person with the consent of a candidate or his election agent to vote or refrain from voting for any person on the ground of his religion, race, caste, community or language". The other part of sub-section (3) of Section 123 which defines corrupt practices is not relevant for the present purpose.

30. It will be necessary in this case to examine in detail the concept of Shri Akal Takht amongst the Sikhs. In this case we have the evidence of the learned professors and certain well-known textbooks dealing with this question.

31. On behalf of respondent 3, it was urged that in order to constitute a Hukamnama proper, there were certain conditions precedent which were required to be fulfilled namely there should be a meeting of Sarbat Khalsa i.e. a meeting of all the Sikhs and secondly a unanimous decision must be arrived at and then it should be followed by the approval of Shiromani Gurdwara Prabandhak Committee and the decision should be announced from Shri Akal Takht. If only these conditions were fulfilled, submits counsel for respondent 3 then a Hukamnama proper with all the consequences of disobedience of Hukamnama by a Sikh can be said to follow.

32. It was urged on behalf of respondent 3 that it was not open to the appellant to raise this contention because in the election petition, it was stated that Hukamnama was issued. Respondent 3 had not stated in his written statement that these conditions were required to be fulfilled before a proper Hukamnama could be issued. It was urged that respondent 3 was himself a Sikh and was a member of the Akali Dal and must have known the perquisites, yet he did not raise these conditions. On the other hand on behalf of respondent 3 it was submitted that in paragraph 9 of the written statement filed by respondent 3, this point has been raised and it was said that no Hukamnama has been issued in favour of respondent 3.

33. The author, Harjinder Singh Dilgeer in his book Glory of the Akal Takht quotes at page 97 historian C. H. Loehlin in his book The Sikh and their Scriptures at p. 1 thus :

The Akal Takht is a preaching centre and also the seat of political and religious conferences..... In fact today the Akal Takht is the symbol of political activity of the Sikhs. All great Sikh movements have been led the seat of the Sikhs.

34. At page 99 in Appendix II, the author described 'Sarbat' as meaning whole. Sarbat Khalsa means collectivity of the Sikh people. It is theo-political doctrine, by means of which the Sikhs assume the powers and the status of the centralised conscience and will of the people. Sarbat Khalsa was first used for the gathering of all Sikhs on the days of Diwali and Baisakhi at Shri Akal Takht, Amritsar. After 1721, the Sarbat Khalsa gathered twice in a year before Shri Akal Takht. Sarbat Khalsa used to discuss the questions of Panthic interest at such gatherings and, gurmata out of the consensus of such meetings were passed. The author of that book records that Sarbat Khalsa has made many important decisions which have changed the history of the Punjab. These include acceptance of jagir (1733), to build a fort at Amritsar (1747), to form Dal Khalsa (1748) to attack Lahore (1760) etc. The usage of the term Sarbat Khalsa began in the middle of the eighteenth century. Previously, according to the author, every individual could participate in the meetings of Sarbat Khalsa. Later on the right got vested in the leaders of the Misl. According to the author, the last meeting of the Sarbat Khalsa was held in 1805. It discussed the dispute of the Lord Lake and Holkar. After this Maharaja Ranjit Singh, according to this author, stopped political meetings and started taking decisions on the advice of his ministers only. The author states that even in the twentieth century, the major Sikh organisations (the Akali Dal and the S.G.P.C.) have opted not to revive this institution and they decide major Sikh questions in the All Sikh Parties' meetings

35. Hukamnama according to the same author in Appendix IV at page 102 is a word used for the Royal letters issued by the Mughal emperors, but it has a wider meaning for the Sikhs. Whereas the Mughal orders were carried out under compulsion, the Sikh Hukamnama was acted upon as a matter of pride. Not only the performance of the Guru's order but even the darshan (a look at) of the Guru's Hukamnama was considered as an honour. In Appendix IV of the said book, the author gives several Hukamnama used.

36. According to the author, historians believe that the step of constructing the Akal Takht near Hari Mandir was due to Guru's idea of keeping temporal and spiritual centres near each other so that one should influence the other. The author also states that after the construction of Akal Takht, Guru Hargovind issued Hukamnama (see also in this connection The Sikh Religion, vol. IV, p. 3 by M.A. Macauliffe).

37. Kushwant Singh in his book A History of the Sikhs, volume I : 1469-1839 at page 63 discussed the Akal Takht of Hargobind as follows :

Across the Harimandir, he built the Akal Takht (the throne of the Timeless God), where, instead of chanting hymns of peace, the congregation heard ballads extolling feats of heroism, and, instead of listening to religious discourses, discussed plans of military conquests.

38. He further mentions that Guru's abode in fact became like that of an Emperor. He sat on a throne and held court. He went out with a royal umbrella over his head and was always accompanied by armed retainers. It has been described that by this time, the Akal Takht had become a spiritual place, a military centre, a political office, a court, a place for gatherings, a durban and a throne issuing Hukamnama (the royal letters). It has been stated in the said book at page 32 that Sikhs used to assemble before the Takht twice a year and the congregation was called the Sarbat Khalsa (the whole Khalsa) and the decisions of the Sarbat Khalsa were called Gurmata.

39. It was contended before the learned Judge on behalf of the appellant that the documents Ex. P-1, Ex. P-2 and Ex. P-4 were issued by Akal Takht and were therefore Hukamnamas. It was contended

that these documents showed that the candidates were to be nominated by the seven members of the committee appointed by Akal Takht and they were the candidates of Akal Takht. It was urged that Akal Takht was the highest religious authority and it was bounden duty of all Sikhs to vote for the candidates nominated by Akal Takht. According to him Sikh voters could not deny the dictate of Akal Takht. On the other hand learned counsel for respondent 3 urged that such Hukamnamas was not Hukamnamas of Akal Takht but the letters written by the Jathedar of Akal Takht.

40. The learned Judge came to the conclusion that it was not necessary to go into the question as to whether Exhibits P-1 and P-2 were Hukamnamas or not as these were issued long before the Assembly elections and the portions of the petition relating to these were ordered to be deleted. Whether Exhibit P-4 was a Hukamnamas or not, there was some dispute and the learned Judge referred to the oral evidence of Dr Fauja Singh, Professor of History, Punjab University, Patiala, who was examined in the Election Petition 32 of 1980 (S. Satnam Singh Bajwa v. Sujagar Singh Sakhwan, decided on March 24, 1981). He had deposed that Akal Takht was founded by Guru Hargobind Sahib, the Sixth Guru in 1606 A.D. On that occasion he put two swords - one called the sword of 'Miri' and the other called the sword of 'Piri'. 'Miri, and 'Piri' are Persian words and connote the temporal authority and spiritual authority respectively. The significance of putting these two swords was to indicate the close relationship between religion and its practice. Since Guru Arjan Dev, the Fifth Guru, was subjected to torture by the Mughal Emperor Jahangir, a strong reaction against that act of tyranny was witnessed amongst the Sikhs. It was with that background that the Sixth Guru decided to militarize the community alongside of continuing to impart religious teachings. Ever since the foundation of Shri Akal Takht it has held a unique position in Sikh religion and Sikh history. During the eighteenth century, meetings of 'Sarbat Khalsa' were invariably held at Shri Akal Takht twice a year - on Baisakhi and Diwali days. At these gatherings, unanimous resolutions used to be passed which were known as 'Gurmata's'. All this has been set out herein before and it is not necessary to examine in any further details. It is undisputed that Shri Akal Takht enjoys a unique position amongst the Sikhs. There is, however, difference of opinion between Dr Fauja Singh and Giani Partap Singh regarding its powers as noted by the learned trial Judge. Dr Fauja Singh had stated that it was a symbol of both political and religious powers whereas Giani Partap Singh had stated that it was supreme religious authority. Dr Fauja Singh had been the Professor and the Head of the Department of Sikh History in the Punjabi University from 1967-1978 and since 1978 he is the Director, Punjab Historical studies. He is a scholar of great repute and well versed in Sikh history. He has been teaching the subject since long. The learned Judge felt that his statement should be preferred and came to the conclusion that Akal Takht was a symbol of political and religious powers. It was found, according to the learned Judge on the evidence, that Exhibit P-4 was not taken in the form 'Gurumata'. On the other hand, it was a decision taken by the leaders of Akali Party at Fatehgarh Sahib written by Jathedar Sadhu and Singh on the letter-head of Shri Akal Takht who announced it.

41. The learned Judge came to the conclusion that there was no decision regarding the selection of candidates. The learned Judge was of the view that if the statement of Dr. Fauja Singh was read, it cannot be held that the same was a Hukamnama of Shri Akal Takht. The learned Judge referred to the view taken by P. C. Jain, J. in Election Petition 32 of 1980.

42. In our opinion that it is not a technical question whether Exhibit P-4 was a Hukamnama or not. It is a question in the present controversy which has to be judged from a broader perspective. As noted before in these matters the Court has to examine the effect of the statements made by the candidate on his behalf upon the minds and the feelings of the ordinary average voters of this country - See Ziyauddin Burhanuddin Bukhari v. Brijmohan Ramdas Mehra ((1975 Supp SCR 281 :

(1976) 2 SCC 17). It is undisputed that Shri Akal Takht enjoys a unique position amongst the Sikhs. It is indubitable that any communication from Shri Akal Takht which is represented by eminent members of the Sikh community as Hukamnama would have great religious persuasive value even though strictly speaking it might or might not be a Hukamnama. For the purpose of this appeal, it is not necessary for us to decide whether in strict textual sense and strict rules of the Sikh community, Ex. P-4 was a Hukamnama or not. It was alleged that Sardar Parkash Singh Badal represented it to be so and it was so represented by the candidate himself and having regard to background, it cannot be said that it did not have the effect of a Hukamnama on the community at large of including them to believe that ignoring the claim of the candidate nominated by Shri Akal Takht and represented to be supported by Hukamnama would be an act of sacrilege on the part of a good Sikh.

43. These questions should be very broadly decided. It would not be an appeal to religion if a candidate is put up by saying "vote for him" because he is a good Sikh or he is a good Christian or he is a good Muslim, but it would be an appeal to religion if it is publicised that not to vote for him would be against Sikh religion or against Christian religion or against Hindu religion or to vote for the other candidate would be an act against a particular religion. It is the total effect of such an appeal that has to be borne in mind in deciding whether there was an appeal to religion as such or not. In each case, therefore, the substance of the matter has to be judged.

44. In the case of *Shubnath Deogram v. Ram Narian Prasad* ((1960) 1 SCR 953 : AIR 1960 SC 148 : 22 ELR 1), this Court reiterated that in substance it would be an appeal on the ground of religion if the act in question has the effect of giving the impression that it would be irreligious not to vote for a particular party or person. Mr Justice Subha Rao, however, dissented from majority view on an examination of the facts of that case.

45. This question, however, has to be kept in view within proper limits and religious leaders have right freely to express their opinion on the comparative merits of the contesting candidates and to canvass for such of them as he considered worthy of the confidence of the electorate. (See in this connection the observations of this Court in the case of *Ram Dial v. Sant Lal* (1959 Supp 2 SCR 748 : AIR 1959 SC 855 : 20 ELR 482).) In *Kultar Singh v. Mukhtiar Singh* ((1964) 7 SCR 790 : AIR 1965 SC 141 : 26 ELR 300), this Court observed that in considering as to whether a particular appeal made by a candidate falls within the mischief of Section 123(3) of the Act, courts should not be astute to read into the words used in the appeal anything more than what can be attributed to them on its fair and reasonable construction.

46. In the light of these discussions for the purpose of this appeal, it is not necessary to accept the submissions on behalf of the appellant that mere sponsorship of respondent 3 and distribution of election ticket to him for the Assembly election in the manner proved would amount to an appeal to religion as such without considering the other facts and circumstances and how it was put to the people or to the electorate. For this purpose it would be necessary to refer to the evidence of meetings at three places.

47. Regarding the meeting at Thandawal, counsel for the appellant did not press it before us. The first meeting which we have to consider is the meeting at Muktsar. PW 12, Hardam Singh gave evidence about Muktsar. His village falls in Muktsar constituency and he stated that 5 or 6 days before the date of the poll, a meeting was organised by the supporters of respondent 3 at Muktsar at about 5 p.m. He attended the meeting. According to him this meeting was addressed by Shri Parkash Singh Badal, ex-Chief Minister, Punjab, Sant Harchand Singh Longowal and respondent 3 himself. It was stated that Shri Badal made a speech at about 6.30 p.m. He exhorted the audience to

vote for respondent 3 because he was a Gur Sikh. He said that he had been put up as a candidate under the orders of the Akal Takht and it was the religious duty of the Sikhs to vote for him. He also showed one paper to the audience which according to him was a Hukamnama issued by the Akal Takht. He further stated that there was good work done by respondent 3 and he would continue to do so if he was elected. It is deposed by PW 12 that Sant Harchand Singh Longowal also made a similar speech. Thereafter, respondent 3 spoke and said that he was a candidate of Akal Takht and it was the duty of the Sikhs to vote for him. He was cross-examined but nothing very substantial came out of it. He reiterated in his cross-examination that Shri Badal told the audience that they should vote for respondent 3 because he had been set up as a candidate of Akal Takht. Shri Longowal and respondent 3 also spoke. He denied the suggestion that he was not present at that meeting.

48. PW 13 also gave evidence about the meeting at Muktsar. He corroborated that Shri Parkash Singh Badal, Harchand Singh Longowal and respondent 3 addressed the meeting. His evidence was more in corroboration with what has been stated. He however did not hear the speech of respondent 3 as he had left the meeting before that. He stated in his cross-examination that four or five persons belonging to his village had accompanied him to the meeting. There was however nothing in substance with what has been stated.

49. As against this on behalf of the appellant three persons gave evidence namely RW 1, RW 2 and RW 8. RW 1 stated that there was a meeting in Muktsar about a week before the polling at about 8.00 p.m. which lasted upto 11.00 p.m. Meeting, according to him, was addressed by Shri Parkash Singh Badal and Shri Harcharan Singh Fatanwalia. According to this witness whose name was Kashmiri Lal, Sant Longowal was neither present nor addressed the meeting. According to him, Shri Parkash Singh Badal only dwelt upon the achievements of his Government and the fact that no Inspector was allowed to harass the voters particularly the city voters. Other speakers who addressed the meeting represented Janata Party, Communist Party and Bhartiya Janata Party. According to him, in the meeting majority of the audience were Hindus, as Muktsar town comprised almost 70% of Hindu population. In cross-examination he stated that he was a member of Muktsar Municipal Committee and he was a member of the CPI and CPI had entered into alliance with Akal Party. The other facts stated by him are not relevant on this point.

50. Krishan Kumar son of Shri Jagan Nath who was also a Municipal Commissioner, Muktsar was RW 2 and he spoke in favour of respondent 3. According to him, Shri Fatanwalia and Shri Badal spoke but they spoke about the achievements of their party and no appeal was made in the name of Akal Takht or in the name of religion. According to him, Hindus outnumbered Sikhs by three times. He also admitted that he was a member of the Communist Party of India (Marxist).

51. RW 8, respondent 3 himself was the next person who gave evidence in support of himself. He said that Shri Parkash Singh Badal visited Muktsar on May 25, 1980 and addressed a public meeting there. That public meeting was addressed by Chaman Lal Joghi, Raj Kumar Girdhar, Roshan Lal Joshi, Paras Ram Bagga, Jagroop Singh and by him. The abovesaid Hindu gentlemen belonged to the Janata Party whereas Jagroop Singh belonged to the Communist Party. The audience, according to him, consisted of 75 per cent. of the Hindus and 25 per cent. of the Sikhs. Shri Badal had merely said that he had been the Chief Minister of the State for a long time and if he was elected, he would serve the people well. He admitted that he himself was relative of Shri Parkash Singh Badal-his daughter was married to the younger brother of Shri Badal.

52. The learned Judge has rejected the evidence on ground of improbability and on the ground that the evidence was not satisfactory because the witnesses had not stated that version to the appellant

nor were these allegations mentioned in the petition. The learned Judge was further of the opinion that in a constituency or place where Hindu population outnumbered the Sikh population, it was unlikely that appeal in the name of Sikh religion would be made. As against this, the following facts will have to be borne in mind :

53. Shri Parkash Singh Badal had not chosen to come and deny the allegations. Indisputably he was present at the meeting. He would have been the best person to deny the allegations made about that meeting. It is not a question of merely proving a fact by adverse presumption. In case where there is positive evidence to prove a fact and there is no denial by the person who is most competent to deny that fact and no reason was given for his not giving evidence especially in the background of his eminence and his position, his relationship with respondent 3 and especially in view of the fact that respondent 3 had in fact been nominated by the same group on behalf of the Sikh community with which Shri Parkash Singh Badal was so intimately connected would lead to the conclusion that the evidence advanced on behalf of the appellant must be accepted. If that is accepted then the following facts emerge :

- (1) it was represented to the electorate that respondent 3 was a nominee of Akal Takht by no less a person than the former Chief Minister of the State in the presence of the candidate himself;
- (2) the candidate himself made the said statement.

54. It follows therefore that an appeal to vote for respondent 3 in the name of Akal Takht with all the consequences of Hukamnama of Akal Takht was highlighted before the electorate.

55. The next meeting which is material is the meeting at Khokhar. Here also PW 17 Makhan Singh gave evidence. His village falls in Muktsar constituency. He said that the supporters of respondent 3 had convened a meeting at Khokhar at about 12 noon about 6 or 7 days prior to the date of poll. The meeting was held in the village Gurdwara. Respondent 3 accompanied by Shri Baldev Singh Sibia and 4/5 other persons had come to attend the meeting. Respondent 3 addressed the meeting first. At the outset he tendered an apology to the audience and said that he had promised to bring Shri Parkash Singh Badal to address this meeting but he could not come as he was busy with the election work in other constituencies. Respondent 3 showed a paper and described it as a Hukamnama issued by the Akal Takht. He stated that he had been given a ticket because he was a Gur Sikh and it was the "religious duty of the Sikh to vote for him", and he also showed some back issues of Akali Times and said that most of the things were written in these papers but he wanted to give a gist of the same. He stated that any Sikh who cast his vote in favour of Indira Congress did not deserve to be called a Sikh. He also said that right to vote was a sacred trust by favour of the Panth and whoever exercised this right against the order issued by the Panth would be regarded as a traitor to the Panth. He mentioned the Gurus. In cross-examination he stated that he owned thirty acres of land and his village was at a distance of two miles from village khokhar. According to him 10 or 12 Hindus were also present in the meeting. He said that he did not know if it was an offense to ask people to vote on the ground of religion.

56. The next witness was PW 18, Malkiat Singh. His village also fell in Muktsar constituency and he spoke that in the Gurdwara of village Khokhar, meeting was held at about 12 noon. He also corroborated that respondent 3 and Shri Baldev Singh Sibia addressed this meeting. There was corroboration of the evidence of this witness. In cross-examination there was not much damage done to his testimony.

57. The next witness was PW 19, Guranditta Singh. He spoke of a meeting about 5/6 days prior to the date of poll and the meeting was held at about noon time in the village Gurdwara in village Khokhar. Respondent 3 and Shri Baldev Singh Sibia addressed the meeting. He more or less reiterated what was stated by the other witnesses. In cross-examination he stated that about 10 to 15 Hindus were present. He further stated that 2 or 3 days after the meeting, the appellant had visited his village and solicited his vote but he had replied that he had made a tour of 2/3 villages along with panthak candidate and for that reason he was not in a position to promise to cast his vote for him.

58. The witness for respondent 3 was one RW 6. She was Smt. Gurmit Kaur wife of Malkiat Singh. She denied that any meeting was held in their village and that she was always in the village throughout the election.

59. Learned Judge found it difficult to rely on his evidence. We do not see any intrinsic improbability in accepting his testimony especially in the absence of good rebuttal evidence.

60. The next village is village Harika Kalan about which PW 19 Guranditta Singh gave evidence. To prove meeting at Harika Kalan, statement of three witnesses Guranditta Singh, PW 19, Sant Singh s/o Arjan Singh, PW 20 and Gurdev Singh s/o Bhajan Singh, PW 21 were relied. The latter two witness belonged to village Harika Kalan. The first one making the statement regarding the meeting at Haria Kalam as well as meeting at village Khokhar, PW 20 deposed that an election meeting was held by the supporters of respondent 3 in village Harika Kalan about 5/6 days the date of polls at village Gurdwara. Similar statement was made by Makhan Singh, PW 17 regarding the meeting at Khokhar. In cross-examination, he admitted that he did not meet the petitioner till the date of has evidence and no one approached him to find out as to whether he attended the meeting or not. Respondent 3 called one Balla Singh, Sarpanch resident of Harika Kalan, PW 5 and Smt. Gurmit Kaur resident of Khokhar PW 6. Both the witnesses were interested in him.

61. Learned Judge did not find it possible to accept their testimony.

62. In a matter of this nature, the evidence naturally is mostly oral. Therefore specially where the charge is a grave one, namely corrupt practice which if proved would disentitle the candidate to contest the election for some time to come, the courts must proceed with caution. An election once held ought not to be treated in a light-hearted manner and defeated candidate should not get away with it by filing election petition. See in this connection the observations of Krishna Iyer, J. in *Rahim Khan v. Khurshid Ahmed* ((1975) 1 SCR 643 : (1974) 2 SCC 660 : AIR 1975 SC 290). See also the decision in the case of *Ch. Razik Ram v. Ch. J. S. Chouhan* (AIR 1975 SC 667 : (1975) 4 SCC 769).

63. Reference was also made to the opinion of this Court in *Kanhaiyalal v. Mannalal* ((1976) 3 SCR 808 : (1976) 3 SCC 646 : AIR 1976 SC 1886) and *M. Narayana Rao v. G. Venkata Reddy* ((1977) 1 SCR 490 : (1977) 1 SCC 771 : AIR 1977 SC 208).

64. Taking into account the totality of the evidence in the back ground of the fact that some communications from Akal Takht call it Hukamnama or any other name were issued and the issues of editorials of Akali Times, which were mentioned by Shri Parkash Singh Badal as stated by the witness on behalf of the appellant and which is not denied by Shri Parkash Singh Badal, we are of the opinion that in this case appeal in the name of religion was made on behalf of respondent 3. Though some facts stated in the oral evidence about the meetings had not been stated in the petition,

but when evidence was tendered and was not shaken in cross-examination and the versions have a ring of truth in the background of other facts, we are of the opinion that the case of appeal to religion by respondent 3 has been proved in this case. This conclusion becomes irresistible in view of absence of any express denial by Shri Parkash Singh Badal and in the absence of any explanation for not calling him as a witness of this point. Several decisions of this Court have laid down various tests to determine the standard of proof required to establish corrupt practice. While insisting on standard of strict proof, the Court should not extend or stretch this doctrine to such an extreme extent as to make it well-nigh impossible to prove an allegation of corrupt practice. Such an approach would defeat and frustrate the very laudable and sacrosanct object of the Act in maintaining purity of the electoral process. (See the observations in the case of Ram Sharan Yadav v. Thakur Muneshwar Nath Singh ((1984) 4 SCC 649).)

65. In the premises respondent 3 was guilty of corrupt practice as mentioned in sub-section (3) of Section 123 of the Act. In the result his election is set aside and the seat is declared vacant. The findings of this Court about the corrupt practice of respondent 3 be forwarded to the President of India for appropriate action under Section 8-A of the Act.

66. A point was made about the petition being not properly verified inasmuch as the source of information had not been mentioned. On behalf of the appellant, counsel drew our attention to Section 83 of the Representation of the People Act, 1951. This point was examined by a Division Bench of the Calcutta High Court in the case of Padmabati Dasi v. Rasik Lal Dhar ((ILR (1910) 37 Cal 259, 260 : 6 IC 666). We were of the opinion that a proper reading of that decision would indicate that for a proper verification of an affidavit or a petition based on certain information, the source should be indicated but we do not wish to examine this question any further because no objection at the initial stage was taken and specially in view of this Court's decision in Ziyauddin Burhanuddin Bukhari v. Brijmohan Ramdass Mehra (1975 Supp SCR 281 : (1976) 2 SCC 17) and in Hardwari Lal v. Kanwal Singh ((1972) 2 SCR 742 : (1972) 1 SCC 214 : AIR 1972 SC 515). On an appropriate occasion, this question may require a fuller consideration.

67. The decision of the learned trial Judge is set aside and the appeal is allowed. Respondent 3 will pay the costs of this appeal.

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