MADHYA PRADESH HIGH COURT

Dwarkaprasad

Vs.

Birendrasingh

First Appeal No. 90 of 1958, Decided on 15.1.1959. from decree of the Court of Member, Election Tribunal, Jabalpur
(T.P. Naik and K.L. Pandey, JJ.

11.08.1958. 15.01.1959

JUDGMENT

T.P. Naik, J.

1. This is an appeal under section 116-A of the Representation of the People Act, 1951 (hereinafter referred to as the Act) against the order of the Election Tribunal, Jabalpur, dated 11th August, 1958, setting aside the election of the appellant, Smt. Sarla Devi Pathak, to the State Legislative Assembly of Madhya Pradesh on the ground that she was guilty of the corrupt practice of bribery as defined in Section 123(1)(b) of the Act.

2. The particulars of the corrupt practice, as alleged in the election petition, were as follows :

> "That on 19-2-1957 Sri Maganlal Bagdi and Srimati Sarla Devi Pathak went to village Singhpur, tahsil Narsimhapur, and addressed a public meeting there. The villagers and voters of Singhpur, i.e., Madhoprasad son of Sivo Bux Swarny, (2) Mangal son of Bootha, (3) Charkha son of Jeevan, (4) Chidami son of Kharge, and (5) Jawahardas, demanded that they need a well as there is dearth of water supply, particularly for Harijans. Sri Bagdi with several villagers and voters, i.e., (1) Madhoprasad sou of Sivo Bux Swamy, (2) Mangal son of Bootha, (3) Charkha son of Jeevan, (4) Chhidami son of Kharge, and (5) Jawahardas, selected a site for the construction of a well, which land site belongs to Sri Seth Vishwanathsingh Mahajan of Singhpur. As the meeting was attended by 300 villagers, it is not possible to give all the names. Srimati Sarla Devi, Congress candidate for the State Assembly, and Sri M.L. Bagdi, Congress candidate for

the Parliament, performed the digging ceremony of the well and broke a cocoanut on this auspicious occasion, promising the construction of the well immediately after the elections. This amounts to a corrupt practice under section 123(1) of the R. P. Act, 1951."

3. In reply, the appellant in her return stated :

"The allegations in para 6(g) of the petition are false and a deliberate misrepresentation. In the course of the meeting at village Singhpur, one of the grievances mentioned by the villagers was lack of water supply in the village. The answering respondent denies that Sri Bagdi with several villagers selected a site for the construction of the well on the land of Sri Seth Vishwanathsingh Mahajan of Singhpur. The site had already been selected by the villager several months before the said election meeting and was only shown by the villagers to Sri Maganlal Bagdi. It is entirely untrue that any ceremony took place of the digging of the well or of breaking a cocoanut. There was no promise of any kind made for the construction of the well. It is denied that the answering respondent has been guilty of any corrupt practice under section 123(1) of the Act of 1951. It is denied that, (1) Madhoprasad son of Shio Bux Swamy. (2) Manual son of Bootha, (3) Charkha son of Jeevan, (4) Chhidami son of Kharge, and (5) Jawahardas, demanded that they needed a well as there was dearth at water supply, particularly for Harijans. It is further emphatically denied that Sri Bagdi with several villagers and voters, viz., Madhoprasaod son of Shio Bux Swamy, (2) Mangal son of Bootha, (3) Charkha son of Jeevan, (4) Chhidami son of Kharge, and (5) Jawahardas, selected the alleged site for the construction of a well. It if denied that the meeting at Singhpur was attended by 300 villagers and that it was not possible to give all the names.

4. On these pleadings, the then presiding officer, Sri T.N. Saksena, framed the following issues:

"6(a) Whether on 19-2-1957, Sri Maganlal Bagdi and Srimati Sarla Devi Pathak went to village Singhpur, tahsil Narsimhapur, and addressed a public meeting there ?

(b) Did the voters and villagers of Singhpur, including those named in para 6(g) of the petition, say that they needed a well and there was dearth of water supply, particularly for Harijans,

(c) Whether Sri Bagdi and other persons selected a site belonging to Seth Vishwanathsingh Mahajan of Singhpur for construction of a well ?
(d) Was this meeting attended by several villagers ?
(e) Did Srimati Sarla Devi and Sri Bagdi perform the digging ceremony of the well and break a cocoanut on the occasion ?
(f) Did they promise construction of a well immediately after the election ?
(g) Does it amount to corrupt practice under section 123(1) of the R. P. Act ? If so, to what effect ?"

5. The evidence on these issues was mostly recorded by Sri Saksena, from whose file the case was transferred on or about 31-3-1958 to Sri M.A. Razzaque, District Judge, Jabalpur, who was then nominated as the Presiding Officer of the Election Tribunal.

6. The Election Tribunal (presided over by Sri M.A Razzaque) held that the appellant was guilty of the corrupt practice alleged and consequently it set aside her election. Its findings, so far as relevant for the purposes of this appeal, were as follows :
(i) That, on 19-2-1957, the respondent, Smt. Sarla Devi and Sri Maganlal Bagdi went to the village of Singhpur.
(ii) That, the respondent Smt. Sarla Devi Pathak and Sri Bagdi both addressed a public meeting at Smgnpur on that date.
(iii) That, in the course of the meeting, one of the grievances mentioned by the villagers was lack of water in the village.
(iv) That, the villagers showed the site of the well to Sri Maganlal Bagdi.
(v) That, the respondent Smt. Sarla Devi Pathak was present with Sri Maganlal Bagdi at the site of the well at that time.
(vi) That, the said well has been constructed after election.
(vii) That, the well has been constructed for the use of Harijans of Singhpur.
(viii) That, the site on which the said well has been constructed belongs to Sri Vishwanathsingh Mahajan (P.W. 12).
(ix) That, at the end of the public meeting held at village Singhpur, on 19-2-1957, the appellant Smt. Sarla Devi Pathak and Sri Maganlal Bagdi promised to the Harijan voters, who had made a demand for a well for their use, to construct a well for them and that thereon the Harijans promised to vote for them. That, even before this, some 2, 4 or 8 days before the Sankrant (i.e., 13-1-1957), they had promised to construct a well for the Harijans of Singhpur.
(x) That, thereafter, the appellant and Sri Maganlal Bagdi asked the Harijans to

select a site. The site, which belonged to Vishwanath Singh Mahajan (P.W. 12), was then shown to them, whereon they performed the muhurt on it for the construction of a well by digging the earth a little at the site.

(xi) That, the next day, they approached Sri Vishwanath Singh (P.W. 12) to persuade him to donate the site for the purpose of digging the well in question.

(xii) The appellant made efforts to get funds from the Government for the construction of a Well for the Harijans of village Singhpur, and it was vely likely that she did this in order to honour her promise given to the Harijans of the village Singhpur in consideration of their voting for her and Sri Maganlal Bagdi. The gram panchayat account relating to the construction of the well was fake and incorrect. The item of Rs. 300/- alleged to be the contribution of the Harijans in lieu of the labour was bogus, and the item of Rs. 500/- alleged to have been borrowed by the Harijans from Choudhary Amolsingh was also false. It was therefore, not unreasonable to infer that these amounts may have come from the appellant personally.'"

7. Of the aforesaid findings, Nos. (i) to (viii) were on the basis of admissions in the pleadings, while Nos. (ix) to (xii) were on the basis of the evidence led by the parties.

8. For the purpose of this appeal, the learned counsel for the appellant does not dispute findings Nos. (i), (iii), (iv), (vi), (vii) and (viii). All other findings are disputed.

9. At the outset, we may any that the most crucial issue in the case is - though no issue is worded in these precise terms - whether the appellant promised to the Harijans of village Singhpur to construct a well for them with the object of directly or indirectly inducing them to vote for her.

10. For proof of this, the Tribunal has mainly relied on the oral evidence of Madhoprasad (P.W. 35), Charkha (P.W. 36), Mangal (P.W. 37) and Vishwanath Singh (P.W. 12), coupled with some circumstantial evidence which we shall consider later. The learned counsel for the respondent-petitioner has also pressed this evidence before us for acceptance in proof of the corrupt practice alleged.

11. Before we take up for examination the questions that arise for consideration in this appeal, we may shortly dispose of an objection to the maintainability of the appeal, which is in the nature of a preliminary objection, though it was raised by the learned

counsel for the respondent-petitioner is the course of his reply. It is contended that the provision of an appeal under Section 116-A of the Act is ultra vires the Constitution, as it offends against Article 329(b) thereof.

The argument is that, in so far as only one challenge to an election petition (sic) is envisaged, namely, one through an election petition, any further challenge in an appeal is impliedly barred. In our opinion, the argument is misconceived. The Act is a special law, as envisaged in the Constitution, providing for the determination of election disputes by Election Tribunals. It further provides that the determination of the Election Tribunal would be subject to an appeal to the High. Court of the State where the Tribunal is situate. Article 329(b) of the Constitution itself envisages a challenge to an election to either House of the 'Legislature of a State, (a) by an election petition presented to such authority as may be provided for by or under any law made by the appropriate Legislature, and (b) in such manner as may be provided for by or under any law made by the appropriate Legislature. At first, the manner provided was that the decision of the question by an Election Tribunal was given finality and there was no provision for an appeal from its decision. Later, by the amended Section 116-A, an appeal is provided from every order made by the Tribunal to the High Court of the State in which the Tribunal is situate, and by Section 116-B finality is given to the decision of the High Court on appeal. In I providing the manner in which election disputes are to be determined, it is within the competence of the appropriate Legislature to give finality to the order of the Tribunal Or to provide for an appeal therefrom to the High Court. An appeal has to be understood in its natural and ordinary meaning. Examining the connotation of the word 'appeal', Subramania Ayyar, J., in *Chappan v. Moidin Kutti,* [1] said :

> "Now, according to Webster's Dictionary, the first meaning, in law, of the noun 'appeal' is the removal of a cause or a suit from an interior to a superior Judge or Court for re-examination or review'. The explanation of the term in Wharton's Law Lexicon, which is only different in words, is 'the removal of a cause from an inferior to n superior Court for the purpose of testing the soundness of the decision of the inferior Court'."

The determination of the dispute by the Election Tribunal is made subject to the re-appraisal of the same by the High Court. In effect, it is nothing more than the determination of an ejection petition presented to the prescribed authority as provided in the Constitution, because the determination of the question by the High Court on

appeal is a continuation of the enquiry commenced before the Election Tribunal on the presentation of the election petition to it. There is no basis for the contention that the appeal is a second challenge to the election not provided for by the Constitution. A similar objection was negatived by this Court in *Ramakant Kesheorao v. Bhikulal,* [2] where it was held :

> "Since an appeal is only a continuation of the original lis, the power of the Parliament, under Article 329(b), would also extend co providing an appeal and also an authority to decide it, when it had the power to make a law for decision of an election petition by an Election Tribunal." The objection has thus no force and it is overruled.

12. We may now shortly recapitulate certain well established principles, which govern the decision of such cases. These principles are :

1. It is a sound principle of natural justice that the success of a candidate, who had won at an election, should not be lightly interfered with, and any petitioner seeking such interference must strictly conform to the requirements of the law : *Jagan Nath v. Jaswant Singh,*[3]
2. It is always to be borne in mind that though the election of a successful candidate is not to be lightly interfered with, one of the essentials of that law is also to safeguard the purity of the election process and also to see that people the not gas elected by fragrant breaches of that law or by corrupt practices: *Jagan Nath v. Jaswant Singh, (supra), at pp. 234-235 (of Ele LR) : (at pp. 212-213 of AIR)*.
3. Due proof of a single act of bribery by or with the knowledge and consent of the candidate or by his agents, however insignificant that may be, is sufficient to invalidate the election. The Judges are not at liberty to weigh its importance, nor can they allow any excuse, whatever the circumstances may be : Haisbury's Laws of England 3rd Edn., Vol. 14, para 384.
4. Charges of bribery, which is a form of corrupt practice, are quasi-criminal in character : *Harishchandra Bujpai v. Triloki Singh,*[4]
5. Charitable gifts, at the time of an may in conceivable cases, amount to corrupt practice of bribery, provided the motive behind the charity was corrupt : Halsbury's Laws of England 3rd Edn., Vol. 14, para 378, under the heading, Charitable Gifts', state :

'Bona fide charity has always been allowed. On the other hand, what are called

charitable gifts may be merely a specious and subtle form of bribery. If a gilt is charitable, it will not become bribery because of the use made of it even if political capital is made out of it; it is not possible by any ex post facto act to make that which was legal at the time illegal and criminal.'

In Lichfield's case, (1869) 1 O' M and H 22 at p. 27, Willes, J., said:

"To prove a corrupt promise, as good evidences is required of that promise illegally made, as would be required if the promise were a legal one.

Reviewing the case law on the subject, Baron Pollock and Brace, JJ., in the St. George's Division case, (1895) 5 O'M and H 89 at pp. 95-96 said :

"..... in each case the question arises whether the distribution of charity was done honestly, or whether it was done corruptly, and that we must take the whole of the evidence into consideration, and inquire whether the governing principle in the mind of the man who made such gifts was that he was doing something with a view to corrupt the voters; or whether he was doing something which was a mere act of kindness or charity. In this view, I find that we are somewhat supported by what was said by Mr. Justice Grove in the Boston, case, (1874) 2 O' M and H. 161 at p. 163 : 'It might be a doubtful question whether, assuming two motives to exist, the one being pure, and the other with the intention to corrupt, you could extrude the corrupt intention, and rely wholly upon the pure intention. I think that must be rather question of degree'. Now in the present case, as in all others in which this question arises, however pore the motives of the charitable donor may, if he be a candidate for the constituency, he is impossible to escape the conclusion that his acts of charity may, or even must, exercise some influence upon the mind of the voters; but where no personal bribery is proved, this influence is common to such a case as the present, and to many others in which the candidate by his personal appearance, power of speech, manner of life, or conduct in the management of the particular election, must or may ingratiate himself in the minds of the electors, and so obtain an advantage over his opponent; and, although we feel that notwithstanding the extreme distress which prevailed, it would have been more prudent for the respondent had he kept aloof from the immediate distribution of the relief, we cannot infer, from the evidence before us, that his motive or

conduct was corrupt, so as to bring himself within the provisions of the law against bribery and treating."

Two further corollaries flow from the aforesaid proposition:

(i) Corrupt practice alleged against a returned candidate, in order to avoid his election, must be set forth in full with all the particulars, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of the corrupt practice.

Adverting to these requirements, the Supreme Court in *Bhikaji Keshao v. Brijlal Nand Lal,* [5] at p. said :

"There can be no reasonable doubt that the requirement of 'full particulars' is one that has got to be complied with, with sufficient fullness and clarification so as to enable the opposite party fairly to meet them and that they must be such as not to turn the inquiry before the Tribunal into a rambling and roving inquisition."

Again in 1957 SCR 370 : AIR 1957 Supreme Court 444, (supra), at p. 394 (of SCR) , it is said :

"It should not be forgotten that charges of corrupt practices are quasi-criminal in character, and that the allegations relating thereto must be sufficiently clear and precise to bring home the charges to the candidates."

(ii) Clear and unequivocal proof is required before a case of bribery will be held to have been established. Suspicion is not sufficient, and the confession of the person alleged to have been bribed is not conclusive..... Where the evidence as to bribery consists merely of offers or proposals to bribe, stronger evidence will be required than in the case of a successful bribe because of the greater likelihood of there having been some misunderstanding: Hatsbury's Laws of England, 3rd Edn., Vol., 14 para 384 :

This requirement is a natural concomitant of the quasi-criminal nature of the enquiry. Repelling the argument that in a civil case, rules of evidence peculiar to criminal law should not be applied to civil proceedings in which a lower standard of proof suffices,

an Election Tribunal presided over by Sri B.N. Rau said (Habigani South case, Hammond's Indian Election Petitions, Vol. II, p. 141 at pp. 143-144) :

> "Our answer is that whether a case is of a civil or criminal nature for this purpose does not depend on the nature of the Tribunal which tries it, or the procedure by which it is tried but on the nature of the issue. To go no further than the ordinary text-books, Kenny in his Outlines of Criminal Law, dealing with the proposition that a larger minimum of proof is necessary to support an accusation of crime than will suffice when the charge is of a civil nature, observes : 'It was formerly considered that this higher minimum was required on account of the peculiarities of criminal procedure, such, for instance, as the impossibility of a new trial, and (in those times) the refusal to allow alone to be defended by counsel and to allow any prisoners to give evidence; and consequently that it was required only in criminal Tribunals. This view is still taken in America; but in England it is now generally held that the rule is founded on the very nature of the issue, and therefore applies without distinction of Tribunal. Hence if arson be alleged as a defence by an Insurance Company when sued on a fire policy, or forgery as a defence by a person sued on a promissory note, it cannot be established in these civil actions by any less evidence than would suffice to justify a conviction in a Criminal Court'. ..... he same author in commenting on the presumption of innocence citing ***Williams v. East India Co., (1802) 3 East 192***, states that the rule hold good not merely in criminal trials but equally in every civil case where any allegation is made that a criminal act has been committed."

In the 36th Edn., of Kenny's Outlines of Criminal Law, the aforesaid proposition is re-affirmed, though with lesser emphasis : (see paras 493, 594 and 595). We have, however, not examined this last proposition in great detail, because we found that there was not even preponderance of reliable evidence to prove the allegations of corrupt practice against the appellants.

13. Examining the evidence in the light of the principles stated above, we may, at the outset, observe that, according to the allegations contained in the election petition, the precise case which the appellant was called upon to answer was that, in pursuance of a demand made by certain persons (villagers and voters of village Singhpur) at a public meeting addressed by her at Singhpur on 19th February 1957, she along with Sri

Maganlal Bagdi, while performing the auspicious digging ceremony of the well, promised to have a well constructed at that village for the Harijans, after the elections were over. This would be clear, if we carefully analyse the various allegations contained in paragraph 6(g) of the election petition, which may be summarised as follows :

(a) That, on 19-2-1957, the appellant and Sri Maganlal Bagdi went to village Singhpur and addressed a public meeting there.
(b) That, Madhoprasad (P.W. 35), Mangal (P.W. 37), Charkha (P.W. 36), Chhidami and Jawahardas (the latter two were not examined) demanded a well as there was dearth of water supply, particularly for the Harijans of the village.
(c) That, Sri Maganlal Bagdi along with the aforesaid five persons selected a site belonging to Vlshwanath Singh (P.W. 12) for the construction of the well.
(d) That, Sri Maganlal Bagdi and the appellant performed the digging ceremony of the well and broke a cocoanut on this auspicious occasion, promising the construction of the well immediately alter the elections.

14. It would be observed that there is no specific allegation that the promise was to give any financial help, nor of the fact that the promise was made with a corrupt motive, nor that it was made with the object of directly or indirectly inducing all or some of the Harijan voters of the village to vote for the appellant.

15. Bearing in mind the importance of full and precise allegations of the corrupt practice in an election petition the Election Tribunal would, under the circumstances, have been better advised to demand further and better particulars before embarking on the inquiry into the petition so far as the allegations regarding the corrupt practice were concerned. Because, otherwise, the judicial proceedings become an inquisitorial enquiry, the petitioner relying on the off chance of stumbling into something which may be of help to him in persuading the Election Tribunal to set aside the election of the returned candidate. The election proceedings are certainly not meant for such a purpose.

16. We have adverted to this aspect of the case at some length, because, when this was pointed out to the learned counsel for the respondent petitioner, he admitted that there was no evidence, oral or documentary, which could go to establish the corrupt practice as pleaded in the petition, e.g., that the appellant, while performing the auspicious

digging ceremony of the well along with Sri Maganlal Bagdi, promised the construction of a well for the Harijans of the village after the elections were over. In our opinion, the absence of such evidence would be sufficient to warrant the dismissal of the election petition, so far as this allegation is concerned.

17. The learned counsel for the respondent-petitioner, however, contended that thy parties understood the allegation in the election petition to mean that the promise to construct the well was made by the appellant at the end of the public meeting. He relies on ground No. 2 in the memorandum of appeal, but the recital therein would show that this was not so. When questioned, the learned counsel for the appellant denied that his client understood the allegation in the sense suggested. According to him, the appellant understood it to mean that the promise was alleged to have been made at the meeting and not alter the meeting. Further, according to him, the averments in the return were in wide terms, where, after denying that any ceremony of digging on the land or of breaking of a cocoanut took place, the appellant stated.

"There was no promise of any kind made lot the construction of a well."

In our opinion, we cannot accept the contention that the parties understood the averments in the election petition to mean that the promise was made at the end of the public meeting at Singhpur.

18. In spite of such vagueness in the pleadings on point, which makes it impossible to ascertain with certainty what precise case the respondent-petitioner had put forward in his petition, we have examined the evidence on which reliance is placed by him to ascertain if there was any true in his allegations, even as understood by him.

19-24. (His Lordship considered the evidence and proceeded) :

25. This is all the evidence on the crucial issue of the alleged oral promise by the appellant to construct a well. This evidence has been accepted by the Election Tribunal as reliable. Though ordinarily, its opinion on the appreciation of evidence is entitled to great weight, in the instant case, the Presiding Officer of the Tribunal, who delivered the judgment, recorded the evidence of only one witness, namely, the appellant. He therefore, could not observe the demeanour of the other witnesses when

deposing, and consequently he was in no better position than ourselves in assessing its value.

26. The Election Tribunal was of the opinion that the evidence of these witnesses was corroborated by the circumstances, that a well was, in fact, sunk for the Harijans of the village and that certain documents on record unmistakably indicated that the appellant had interested herself in its construction. Corroboration, in order to be of any value, must he on material particulars, and facts relied on for corroboration must be established by reliable and independent evidence. These facts must be such as to lend assurance to the crucial issue which is in question. In our opinion, there is no such corroboration here.

27. Before examining the circumstances on which reliance is placed, we may observe that the evidence of Charkha (P. W. 36) shows that the Harijans of the village had been asking for a well for themselves for the last eight or ten years. The demand was, therefore, not new. The resolution of the Gram Panchayat, Singhpur, contained in Ex. R. 58, also suggest that in January, 1956, the Panchayat was alive to the problem. The fact that till 28-1-1957, no action was taken in the matter, could not lead to the conclusion that no action was taken by it at all, or that whatever action was taken by it later on was in reality attributable to the act of the appellant. The appellant admits that she was in village Singhpur on the 19th February, 1937, but she denied that she spoke at the meeting, which was addressed by Sri Maganlal Bagdi. She also denied the allegation that she was present when Sri Maganlal Bagdi performed the alleged conservational digging ceremony of the well. The Election Tribunal has held that both these points were fully established on the basis of the pleadings, because no specific denials were made of the allegations contained in the election petition relating to these issues. While it is true that the allegations of fact, which are not denied specifically or by necessary implication, may be accepted to have been admitted, proviso to Rule 5 of Order 8, C.P.C., provides that the Court may, in its discretion, require any fact so admitted to be proved otherwise that by such admission. The then Presiding Officer, Sri I.N. Saksena, presumably acting on the proviso, framed issue No. 6(a) requiring the fact of the appellant having addressed the meeting to be proved. If he had taken the fact to be admitted specifically, or even by implication, he would not have put it in issue. Further, as held by the Judicial Committee of the Privy Council in *Anand Kuar v. Tan Sukh,*[6] when a point has been the subject of an issue, the parties shall not be head to say that the point was not disputed and so required no proof. The

issue of the appellant having addressed the meeting will therefore have to be decided on the basis of the evidence on record. (After examining the evidence his Lordship proceeded) :

36. We are, therefore, of opinion, that the evidence of the witnesses relied upon by the petitioner-respondent in support of his allegations regarding the corrupt practice of a promise of bribery in question is inherently weak and unreliable in itself; it is not consistent in that one witness does not agree with another on important points; not does it accord with the other evidence on record. We have, therefore, no hesitation in rejecting it and consequently we hold that the appellant was not guilty of a corrupt practice of bribery, even on the case as understood by the petitioner-respondent.

37. During the course of arguments, a quashed arisen, whether, even if the allegations the, any offence of a corrupt practice of bribery, as defined in Section 123 of the Act, would be made out because the allegations were to more than this, that the appellant had promised those her good offices for the construction of a well for the Harijans of village Singpur. Neither was there any allegation in the petition that the appellant had promised to give monetary help for the construction of a well nor was the petitioner-respondent prepared to put his case as high as that, especially as there was no evidence that any money which went for the construction of the well came from her. We have, however, refrained from examining this question because, on the view of the evidence taken by us, the question does not arise.

38. In the result, we hold that the appellant be held guilty of the corrupt practice of as defined in Section 123 of the Act, in of the promise of the construction of a well village Singpur for the Harijans. The appeal, therefore, will have to be allowed (so far as his allegation is concerned).

39. The learned counsel for the respondent-petitioner had also prayed for leave to support the operative part of the decision of the Election Tribunal setting aside the election of the appellant on the grounds which he had failed to substantiate before it. This, he claimed, he was entitled to do under procedure the rule 23 of Order XLI of the Code of Civil. The learned counsel for the appellant objected to the reopening of the issues decided in her favor, on the ground that a challenge to her election on those issues having been negatived, the re-opening, of those issues would be tantamount to

challenging the election once again in contravention of Article 329(b) of the Constitution. In our opinion, the objection is misconceived. In the first place, by re-opening of the issues in favor of the appellant, her election is not being challenged afresh, as the enquiry in appeal is a continuation of the enquiry initiated by the election petition before the Election Tribunal. Secondly, in virtue of Section 116-A(2) of the Act, this Court, while dealing with an appeal, has been given the same powers, jurisdiction and authority, and is to follow the same procedure with respect to it, as if it were an appeal from an original decree passed by a civil Court under the civil appellate jurisdiction. By the creation of this legal fiction, the provisions of rule 23 of Order XLI of the Code of Civil Procedure are automatically attracted; and if the respondent-petitioner in an ordinary civil appeal could support the judgment on grounds on which he had failed in the Court below, he could do so in an appeal under Section 116-A of the Act as well, e.g., he could support the operative cider of the Election Tribunal on grounds decided against him there. Such a procedure has been approved in this Court in *Inayatullah Khan v. Diwanchand,* [7] and the view taken there in has our respectful concurrence. The questions sought to be re-opened by the respondent-petitioner are covered by the following issues, i.e., issues Nos. 2, 3 and 7. We shall now examine the contentions of the learned counsel for the respondent-petitioner relating to them seriatim.

40. Issue No. 2. Shortly stated, the issue was: whether the appellant herself and through her agents and workers named in paragraph 6(a) of the election petition circulated in her constituency pamphlets in Hindi (Ex. P-5, P-25 and P-30), of which Ex. P-31 is the original copy, referred to in the judgment of the Election Tribunal as 'Nakab Parcha' published in the name of Devichand Kankaiya, her agent, containing false and defamatory statements against the petitioner-respondent, with a view to prejudice the prospects of the election of the Praja Socialist Party candidate and thereby committed a corrupt practice under Section 123(4) of She Act. The Election Tribunal found that the pamphlet (Ex. P-31) published in the name of Devichand Kankariya was widely circulated by the appellant and her agents in her constituency on 24th February 1957, but that the said pamphlet did not contain false and defamatory statements to the knowledge of the appellant, her agents and workers, nor that the statements contained therein, were reasonably calculated to prejudice the prospects of the Praja Socialist Party candidate's election. It was accordingly held that the appellant was not guilty of a corrupt practice under Section 123(4) of the Act read with Section 100(1)(b) and (d) thereof. The adverse findings are challenged by the

respondent petitioner, while the appellant also challenges the finding regarding the circulation of the pamphlet by herself or her agents held against her.
41 to 42. ******

43. The Election Tribunal found that the pamphlet (Ex. P-5) was distributed at Narsimhapur, Kareli, Gidwani and Amgaon on the 24th February 1957 by the appellant, her agents and by others with her knowledge, consent or connivance. (His Lordship held that the distribution of the pamphlet at Narsimhapur was not established and on the question of this distribution at Kareli, His Lordship continued :) There is no evidence which directly fixes the liability for the distribution of the parcha on to the appellant or her agents. The inference drawn by the Election Tribunal for coming to the conclusion that the distribution was with the knowledge, consent or connivance of the appellant is based on the following facts :

> (a) That, Devichand Kankariya, who admittedly published the pamphlet is a close relation of persons well known to the appellant, e.g., Kishanlal Kankaria and Subhkaran Lunawat;
> (b) That, Devichand Kankariya is concealing the name of the author of the pamphlet;
> (c) That, Devichand Kankariya was formerly a co-worker of Sri D.P. Pathak, the husband of the appellant; consequently, he must be intimately connected with the appellant; and her denial that she did not know of the pamphlet till it was mentioned in the election petition was false;
> (d) That, though the costs for the printing of the parcha was borne by Devichand Kankariya, the bill for it was made in the name of the Tahsil Congress Office, the party organization of the appellant. (Though the bill has not been filed, the basis of the contention is the evidence of Shivnath Singh (P.W. 51).

These circumstances established may create a great deal of suspicion against the appellant but they are not sufficient to establish that the publication of the pamphlet was with the knowledge, consent or connivance of the appellant. But we may not pursue the matter further, as, in our opinion, the pamphlet in question does not come within the purview of Section 123(4) of the Act. The section reads :

> "123. The following shall be deemed to ho corrupt practices for the purposes of this Act :

X X X

(4) The publication by a candidate or his agent or by any other person, of any statement of fact which is false and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate, or in relation to the candidature, or withdrawal, or retirement from contest, of any candidate, being a statement reasonably calculated to prejudice the prospects of the candidate's election." It would be seen that in order to bring the case within this section, there must be -

(a) the publication of any statement of fact,

(i) which is false,

(ii) which the publisher either believes to be false or does not believe to be true;

(b) the statement must be in relation to -

(i) the personal character or conduct of any candidate,

(ii) the candidature or withdrawal or retirement from contest of any candidate; and

(c) the statement must be reasonably calculated to prejudice the prospects of such candidate's election.

44. The learned counsel for the respondent-petitioner contends that the statements in the 'Nakab Parcha' are false statements of fact and they relate to the personal character or conduct or Sri Mohendra Singh, Kiledar (P.W. 54), the defeated candidate. The Nakab Parcha is in the following terms :

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45. The first consideration is that the publication must be of any false statement of fact In relation to the personal character or conduct of the candidate, and not of any false statement of opinion in relation thereto. Emphasising the point in relation to the similar language, in Section 91(1), Representation of the People Act, 1949, the learned Judges in *Ellis v. National Union of Conservatives, etc., (1900) 44 Sol Jo 750 say* :

"The language of the statute is 'false statement of fact' and that language must be used in contrast to a false statement of opinion. The language used is not merely a 'false statement' but; a false 'statement of fact' ..... the statement must be in relation to the personal character or conduct of the candidate. It must, therefore, be a false statement of fact bearing on the candidate's character or conduct."

Thus, a statement that a candidate would not pay his hotel bill or debts was held to be within the provision, but a statement that a candidate is a communist or a 'Radical traitor' was held to be a statement of opinion rather than that of fact : (see Halsbury's Laws of England, 3rd Edn., Vol. 14 p. 227, foot note (a)). Further, the words will have to be interpreted, according to their real and true meaning and not necessarily according to their literal sense. 'What the passage meant to convey' is the test : (see foot note (c) ibid). As explained in Ex. South Northern Division rase, (1911) 6 O'M and H 103 at pp. 154-157, 'the true meaning will depend on the occasion of the publication, the persons publishing, the person attacked and the readers intended to be addressed'. In the oft quoted case reported in Cockermouth Division case, (1901) 5 O'M and H 155, Darling, J., (as he then was) said :

> "What the Act forbids is this : You shall not make or publish any false statement of fact in relation to the personal character or conduct of such candidate; if you do, it is an illegal practice. It is not an offence to say something which may be severe about another person nor which may be unjustifiable, nor which may be derogatory, unless it amounts to a false statement of fact in relation to the personal character or conduct of such candidate; and I think the Act says that there is a great distinction to be drawn between a false statement of fact, which affects the personal character or conduct of a candidate, and a false statement of fact which deals with the political position or reputation or action of the candidate. It that were not kept in mind, this statute would simply have prohibited at election times all sorts of criticism which was not strictly true, relating to the political behaviour and opinions of the candidate. That is why it carefully provides that the false statement, in order to be an illegal practice, must relate to the personal character and personal conduct."

This statement of law was accepted as apposite by a Division Bench of this Court in *Kanhaiyalal Tiwari v. Shyam Sunder,* [8] , in interpreting Section 123(4) of our Act, and we respectfully agree with that opinion.

46. Examining the statements contained in the pamphlet in the light of the aforesaid principles, we are of opinion that the statements beginning with the heading may be considered to be statements of fact, but the statements thereafter;

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are mere expressions of opinion of the publisher.
47. The latter portion will thus not be covered by the provisions of section 123(4) and as for the first portion, the Election Tribunal has rightly held that 'they relate to the public or political activities of Sri Mahendrasingh Kiledar, and not to his personal character or conduct.' The learned Presiding Officer has examined the statements, sentence by sentence, in para 60 of its order and we agree with his conclusions.

48. It has been found that at the time of the publication of the parcha, the publisher had no reason to believe that the statements contained therein were false. His belief was based on a comparison of the promises made by Sri Mahendrasingh Kiledar in his pamphlets (Exs. R-4 and K-5) published by him at the time of his candidature for the president ship of the Municipal Committee, Kareli, with his various acts of omissions and commissions during his tenure of office, and on the further fact that the Municipal Committee was later superseded by the State Government and that a writ petition filed to set aside the supersession was rejected by Bhutt, J., (has he then was) sitting singly. The learned Presiding Officer has examined the import and the truthfulness of those statements in detail in paragraphs 56 to 67 of his Older, and we agree with his conclusions contained in paragraph 68 thereof. We, therefore, hold that issues Nos. 2(f), (h) and (i) were rightly decided.

49. Issue No. 3. This issue relates to the publication and distribution of a pamphlet (Ex. P-24 - Ex. P-32B, is its original) called 'Savadhan'. To prove its publication and distribution the same set of witnesses have been relied on who were relied on in respect of the distribution of the pamphlet 'Nakab Parcha', with the addition of Gulabsingh (P.W. 5), G.S. Katlml (P.W. 53) and N.P. Kaitle (P.W. 52), and the learned Presiding Officer has come to the conclusion :

> "I hold it established that the 'Savdhan' pamphlet was written and signed by Shyamlal Jaiswsl, a prominent worker of the Congress Party, and that its printed copies were widely circulated in Narsinghpur, Kareli and other villages by Devichand Kankariya, Subhkanim Lunawat, Puran Nai, Jagannath Pande, Sri A.N. Mushran, pleader, etc., on 24-2-1957."
> Without any further discussion, he has further held : "Presumably, they were all workers of the respondent Smt. Sarla Devi Pathak. These workers must be held to be her 'agents' within the meaning of section 123 of the Act, because of the

explanation appended to section 123 of the Act. I accordingly decide all these issues in the affirmative."

This further conclusion, in our opinion, is not warranted by the evidence on record.

50. It may be noted that though the acts specified in section 123 of the Act shall be deemed to be corrupt practices when done by any person, whether a candidate, his agent or by any other person unconnected with the candidate, Section 100(1)(b) provides that the election of a returned candidate can he declared to be void if any corrupt practice is 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.' In the definition of 'agent' in Explanation (1) to Section 123(7) of the Act, the expression 'agent' includes 'an election agent, a polling agent and any person who is held to have acted as an agent in connection with the election with the consent of the candidate'. It would be observed that if a person is not an election agent or a polling agent, then acting with 'the consent of the candidate', has been made a necessary ingredient to constitute him an agent of the candidate. But, apart from this, if the election of the appellant is to be avoided her 'consent' or the consent of her election agent, would have to be established in order to fix her with the liability for the corrupt practice committed by persons other than her election agent. Consent is a question of fact in every case. It may be expressed or implied. It may be inferred from the acts and conduct of the returned candidate nr from other facts and circumstances established in the case. But, the mere fact that the acts of other persons helped and supported the election campaign of the returned candidate would not be enough. Even non-interference with the activities of persons who may be acting in support of his canvass would not without something more be sufficient to saddle the returned candidate with the liability for the corrupt practices committed by them.

51. In the instant case all we know is that certain persons published the impugned pamphlets and distributed them in the constituency of the appellant on the eve of the election. But from this bald fact alone, in our opinion, no inference of 'consent' could be drawn, and there are no such other facts and circumstances established which would make such an inference reasonably possible.

52. But even if we are wrong as to this, the question is only of academic importance

because of our finding that the contents of pamphlet 'Savdhan' are not hit by the provisions of section 123(4) of the Act.

53. The pamphlet 'Savdhan' is in the following terms : (Here follows the extract in Hindi-Ed.)

54. The statements contained in paragraphs 4, 6 and 7 above, to which objection is taken, have been translated in the order of the Election Tribunal as follows :

> (1) That the workers of the 'Hut Symbol' party have been so foolish as to threaten to shoot even Pandit Jawaharlal Nehru, the great leader of the country.
> (2) That the Praja Socialist Party is by coming, to understanding with the Muslim League following exactly the footsteps of Mir Jafar, Jayachand and Mohammad Ali Jirmah and making common cause with Pakistanis.
> (3) That to vote for such a party is to sell the country and nothing but treason.

55. The Election Tribunal has held that the first two statements are statements of fact, and are false and believed to be false by persons who circulated the pamphlet; while the third statement is only an expression of opinion. The last statement, therefore, does not attract the provisions o - Section 123(4) of the Act. As for the first two statements, the learned counsel for the appellant could not point out to us any reliable evidence which could establish that they were not false. The finding of the Election Tribunal regarding them, therefore, stands. The question is whether they relate to the candidate's personal conduct or character, or to his candidature. The contention of the learned counsel for the appellant is that they relate to neither.

56. These very statements contained in this very leaflet were the subject-matter of a decision in another election appeal, e.g., (Election) First Appeal No. 29 of 1958 D/d. 10.5.1958 (MP) (supra),, decided on 10th May 1958, wherein a Division Bench of this Court, repelling the contention that the statements were in relation to the personal character or conduct of the candidate said :

> "In our opinion, the allegations made in the pamphlet "Savdhan" do not amount to a reflection, upon the personal character or conduct of the can-date for the Praja Socialist Party, which had the symbol of the "hut' for election purposes. All that is done is to make a general statement in regard to the activities of the party. That does not reflect upon the personal character or conduct of the

candidate set up by the Party."

Answering the next contention, that they related to the candidate's 'candidature', it further said :

> "It was contended that the word 'candidature' here means the bundle of rights which the candidate enjoys after he becomes a candidate. The definition is taken from *M.R. Meganathan v. K.T. Kosalrarn,* [9] (Ele Tri Tanjore). The word 'candidature' has not been denned in the Act. The dictionary meaning of the word 'candidature' is 'the state of being a candidate'. The allocation of the terms, 'candidature', 'withdrawal' or 'retirement from contest' shows certain stages in the election. While the last two expressions refer to his ceasing to be a candidate, the first expression refers to his continuing as such. The Tribunal held that by the word 'candidature' is meant something less than the candidate and in this we entirely agree. The false statement must be not in relation to the 'candidate' but in relation to his 'candidature', and candidature cannot be equated to the candidate. Aspersions on the candidate are dealt with in the first part of the sub-section, while as persons on his candidature are dealt with in the second part. In our opinion, the word 'candidature' means 'the state of his being a candidate', and his state as a candidate must suffer by the aspersions. We can give a few examples : To say that a particular person has been set up by a rival party or is a dummy or that he would withdraw from the election contest through force or allurement are all aspersions on his 'candidature' because they go to the root of the reality of his desire to stand as a candidate. But to say, that a particular party is not fit to be supported does not involve an aspersion upon the 'candidature', though in certain circumstances it may involve an aspersion upon the candidate. As we have already pointed out, the word 'candidature' must be defined differently from 'candidate' and denotes something else. In our opinion, the aspersions which were made in the pamphlet 'Savdhan' may be regarded as aspersions upon the party or upon the people who were supporting a particular candidate or even possibly upon the candidate; but they cannot be regarded as being made with regard to his 'candidature'." Further, in paragraph 14, the learned Judges said :
>
> "Reading the document as a whole and in its several parts, we are quite clear that the aspersions go no more than against the party of which Sashi Bhushan Singh was a member. They are not reflections upon his personal character or his

personal conduct. In fact, they do not refer to him at all. They are not also a reflection upon his candidature, in the sense we have explained, and therefore, Section 123(4) is not applicable to the case."

57. As we are in respectful agreement with the learned Judges on the interpretation put by them on the impugned statements, we need not set out in any great detail our reasons for it.

58. We have already discussed, when considering the issue of 'Nakab Parcha', the requirements of law for the purpose of establishing the corrupt practice defined in Section 123(4) of the Act. We have there emphasized that it is very essential that the impugned false statements must relate to the personal rather than the public or political character or conduct of any particular candidate.

59. Now, examining the statements, we find that the first statement refers to the workers of the "hut symbol' party and the second to the Praja Socialist Party itself. It was not denied that the 'hut' was the symbol of the Praja Socialist Party, which is a political party to which the candidate Sri Mahendrasingh Kiledar belonged. Consequently the 'hut' symbol party means the party with the 'hut symbol', i.e., the Praja Socialist Party. Any imputation against the workers of a political party, or the political party itself, cannot be taken to be an imputation in relation to the personal character or conduct of a candidate who belongs to that party. In the first place, the alleged false statement is not in relation to any particular candidate, and, secondly, in so far as it is against the workers of a political party or the party itself, which included the candidate, it can at best be said to be against the public or political character or conduct of the candidate and not against his personal character or conduct.

60. As to the alternative plea that the statements were in relation to the candidature of the candidate, the connotation of the term 'candidature' has been examined by the learned Judges in First Appeal No. 29 of 1958 D/d. 10.5.1958 (MP) (supra), paragraph 12, and with that discussion we entirely agree. The term 'candidate' cannot be equated to the' term 'candidature'. It has been used in conjunction with the words 'candidature of a candidate' can only mean 'the state of his being, a candidate' or 'the fact of his being a candidate'. Any false statement made in relation to the fact of a person being a candidate for an election would be covered; but by no stretch of the language can false statements in relation to the activities of a political party of which the candidate is a

member be made to refer to his 'candidature'. We are, therefore, of opinion that the pamphlet 'Savdhan' does not contravene the provisions of Section 123(4) of the Act.

61. Issues Nos. 7(a) to (c) : These issues relate to an alleged promise made by the appellant to build a school at village Rani Pindrai. The allegations with respect to this corrupt practice are contained in paragraph 6(h) of the election petition. These are :

> "That, Shrlmati Sarla Devi Pathak and Sri D.P. Pathak, her husband, went to Rani Pindrai village on 22-2-1957 and promised a school building to the village, on consideration of their voting for the Congress candidate and performed the foundation-stone laying ceremony. This amounts to a corrupt practice under section 123(1) of the R. P. Act, 1951." The appellant denied that she had gone to village Rani Pindrai on 22-2-1957, as alleged, or that she made any promise for the construction of a school building there in consideration of the villagers of that village voting for her or that she performed the foundation-stone laying ceremony in pursuance of the aforesaid promise or at all.

62-64. (His Lordship examined the evidence and agreeing with the Tribunil found Issue No. 7 in favour of the appellant).

65. The attack by the respondent-petitioner, on the findings of the Election Tribunal on issues Nos. 2, 3 and 7 thus fails.

66. In the result, the appeal of the returned candidate, Smt. Sarla Devi Pathak, is allowed with costs. The election petition filed by the respondent-petitioner is dismissed with costs.

Appeal allowed.

Cases Referred.

1. ILR 22 Mad 68 at p. 80 (FB)
2. F. A. No. 47 of 1958 D/d. 26-06-1958: AIR 1959 Mad Pra 141
3. 9 Ele LR 231 at p. 234: (AIR 1954 SC 210 at p. 212)
4. 1957 SCR 370 at p. 394: AIR 1957 SC 444 at 456
5. 10 Ele LR 357 at p. 369: (AIR 1955 SC 610)

6. ILR 11 All 396 (PC)
7. Ele. F.A. No. 130 of 1957, D/d. 26.4.1958
8. F. A. No. 29 of 1958, D/d. 10-05-1958 (MP)
9. 9 Ele LR 242 at p. 263