

PUNJAB AND HARYANA HIGH COURT

S. Mehar Singh

Vs

Umrao Singh

(D Falshaw, C.J. G Singh, J.)

15.09.1960

JUDGMENT

Falshaw, J.

1. This appeal arises out of the election of a Member of the Punjab Legislative Assembly from the Faridkot constituency at the time of the general elections in 1957. Polling took place on the 10th of March 1957 and the present appellant, who had polled 18,579 votes, was declared elected. His nearest rival, who had 37,455 votes, was His Highness Raja Sir Harinder Singh, the erstwhile Ruler of the State of Faridkot. The election was challenged in a petition filed under Section 81 of the Representation of the People Act, 1951, by two voters of the constituency, Umrao Singh and Lall Singh, who had admitted in the course of evidence to be employed by His Highness the Baja and to have received financial support from him in connection with the petition.

2. In the petition a large number of detailed allegations of all kinds of electoral offences were made and the issues framed on the basis of these allegations cover almost two pages of the printed report of the judgment of the Tribunal published in the Punjab Gazette. I do not consider that it is necessary to reproduce them in full here and it will be sufficient for the purposes of the appeal if those issues are mentioned on which the Tribunal decided against the successful candidate and on account of which his election was declared to be void, and also those issues on which the findings of the Tribunal in favour of the successful candidate have been attacked by the learned counsel for the respondents in the appeal for the purpose of upholding the decision of the Tribunal on other grounds.

The election of the successful candidate was declared to be void on the basis of findings against him on three parts of the second issue framed, which were held to be instances of undue influence, and the finding on the sixth issue to the effect that he had incurred or authorised expenditure in contravention of law or, in other words, in excess of the permitted maximum of Rs. 7,000/-.

3. The first matters to be dealt with are the alleged instances of undue influence which have been found against the appellant. They are covered by the following parts of the second issue:

"II (b) Whether the poster captioned 'Appeal' as mentioned in para 6(II)(b) of the election petition was issued under the authority of Hon'ble Shri Jagjiwan Ram?

(c) Whether the said poster amounts to undue influence?

(g) Whether the poster captioned 'Appeal' as mentioned in para 6(II)(e) of the election petition was issued under the authority of Shri Karam Chand Bhandari?

(h) Whether the said poster amounts to undue influence?

(i) Whether the poster captioned 'Appeal' as mentioned in para 6(II)(f) of the election petition was issued under the authority of Sarvshri Harbans Singh, Harkirpal Singh and Inder Singh?

(j) Whether the said poster amounts to undue influence?"

4. The first of the above posters as translated

"To the voters of Faridkot

Appeal

Voters Sahiban.

After the independence of India the Congress for the last ten years has been engaged in the reconstruction of the country. First Five-Year Plan has been completed and the Second Five-Year Plan is being implemented, on completion of which Bharat would rank in the front rank of the nations of world.

At this stage to complete the Second Five-Year Plan, to solve rightly the problems of the Scheduled Castes, to end the cold war between India and Pakistan and to find a solution of the Kashmir problem it is essential that Congress should be voted to success.

I appeal to the Scheduled Caste voters specially and the general voters generally that they should vote for the Congress candidates in their boxes bearing the symbol of two bullocks with yoke on and make them successful."

Then follows a pictorial reproduction of the symbol and then the name "'Jagjiwan Ram, Minister Railway Vibhag, Government of India, New Delhi." There is obviously nothing offensive in the contents of this poster, which is a general appeal to the voters to support the Congress candidates, not only Mehar Singh appellant but also the candidates in the Scheduled Castes seat and the Parliamentary seat, but it is admitted that the printing of the poster was paid for by Mehar Singh, who has in fact maintained that it was issued under the authority of the Hon'ble Minister for Railways in the Central Government, Mr. Jagjiwan Ram, who is undoubtedly an old supporter of the Congress party and ranks as the leading member of the Scheduled Castes in the party. The learned Tribunal has found that the issue of the poster in his name was not authorised by the Hon'ble Minister and that its publication and distribution was a fraudulent device which amounted to undue influence within the meaning of Clause (2) of Section 123 of the Act.

5. With regard to the authorisation of the poster, I do not think it is possible to differ from the finding of the learned Tribunal. Obviously the best person to depose to its authorisation by Mr. Jagjiwan Ram was that gentleman himself, but no attempt has been made to obtain his confirmation on the point. Mehar Singh has admitted that he had not himself directly obtained an authority and the person who was alleged to have obtained the authority was Giani Zail Singh R. W. 75, who is said to have given a draft of the poster to Gurbakash Singh Chahal R. W. 74, who is said to have been deputed by the District Congress Committee to look after the election affairs of Faridkot.

Giani Zail Singh M. P., who was Vice President of the Punjab Pradesh Congress Committee at the time of the election, has stated that he had obtained permission from Mr. Jagjiwan Ram to publish the poster and he accordingly directed the election organisation of Faridkot to have the poster printed and distributed. He could not, however, remember the date on which he obtained the authority of Mr. Jagjiwan Ram and he could not produce any authority in writing, and from his statement it would appear that the draft was in fact prepared some time after he was alleged to have seen the Railway Minister.

It may be mentioned here that the learned Tribunal was also dissatisfied with the evidence of these two witnesses regarding cheques for sums amounting to Rs. 3,000/- drawn, by Brish Bhan, Secretary of the PEPSU Pradesh Congress Committee, in favour of the candidate Mehar Singh during the election campaign in connection with the part of the case referring to the election expenses of Mehar Singh, and in due course the same doubts will be expressed in the present judgment when dealing with that part of the case.

The matter can be summed up, as I have already observed, by saying that it was the simplest thing for the appellant to prove that the Railway Minister personally approved of the appeal to the electors of Faridkot which was issued in his name by unimpeachable evidence, and instead

only evidence of a doubtful character has been produced.

The matter must accordingly be decided on the basis that in fact the name of the Railway Minister was introduced in the appeal to the voters without his authorisation. Whether, however, this amounts to undue influence within the meaning of Section 123(2) is a matter, which I shall consider in connection with the three posters as a whole regarding which the decision has been given against the appellant.

6. The second poster, which was also admittedly printed and distributed at the expense of the appellant, purports to be an appeal issued in the name of Karam Chand Bhandari, who at the time was the President of the Faridkot City Congress Committee. The Congress symbol is depicted at the head of the poster, followed by the words:

"Appeal;

Residents of Faridkot, Jai Hind. Illustrious citizens of my illustrious city cast all your three votes in boxes bearing the symbol of two bullocks of Congress candidates and keep up the illustrious traditions of the city.

Karam Chand Bhandari, President, City Congress Committee."

Regarding this poster I am not on the whole inclined to agree with the finding of the learned Tribunal that it was in fact issued without the approval of Karam Chand Bhandari. Ram Parshad R. W. 32 has deposed that he was working as General Secretary of the City Congress Committee Faridkot at the time of the last general elections and that he and Karam Chand Bhandari had gone to the printer and ordered printing of the appeal which, it is to be noted, was not merely on behalf of Mehar Singh but also on behalf of the other Congress candidates standing for election to other seats.

It is said that the publication of the poster was the result of the decision of the Committee taken in the meeting. Khazan Singh, R. W. 35, the Proprietor of the Guru Amrit Press which had printed the poster, stated that Karam Chand Bhandari actually came and ordered printing of the poster. Against this Karam Chand Bhandari was produced as P. W. 86 in rebuttal and he denied that the poster was published with his consent or that he had gone to Khazan Singh in connection with getting it printed.

7. There does not seem to be any doubt that the said poster was circulated during the course of the election campaign and it would therefore appear to be surprising that if Karam Chand Bhandari found an appeal issued in his name being circulated without his having authorised it, he should not have objected, if indeed he disapproved of the appeal, but since he has stated that he was supporting the Congress Candidates during the campaign he could scarcely have

disapproved of the appeal. He has stated in cross-examination that he did not become aware of the existence of the poster until after the election was over when Khazan Singh came to him and asked him to put his signatures on the draft of the poster. I can only say that I regard this allegation as doubtful.

8. The third poster regarding which the learned Tribunal has decided against the appellant, R. W. 20/8, is an appeal in the name of the Bahawalpur Punjabi Refugee Committee. It reads:

"BAHAWALPURI PUNJABI REFUGEE COMMITTEE'S APPEAL Cast Your Votes for Congress! The Members and President, Bahawalpuri Refugee Committee, appeal to all Bahawalpuri Refugee brethren that all Bahawalpuri refugees should make Sardar Mehar Singh, the Congress candidate, successful by casting their votes and thus strengthening the hands of Pandit Jawahar Lal Nehru.

"We are, your servants,

1. Harbans Singh President, Bahawalpuri.
2. Sajjan Singh Zaildar, Vice President.
3. Hari Singh Bargari.
4. Seth Guranditta Mal, Kot Kapura.
5. Seth Bhagirath Mal.
6. Bishan Singh Makkar.
7. Harkirpal Singh Arainawala.
8. Sarwan Singh.
9. Inder Singh of Sadiq."

The present respondents in their election petition did not go so far as to allege that this poster was altogether unauthorised by the persons whose names it bore. They had apparently discovered three of the alleged signatories, Harbans Singh, Harkirpal Singh and Inder Singh, who were prepared to deny that they had authorised the use of their names, but when we come to the reading of evidence it would appear that only one of them, Inder Singh P. W. 87, was prepared to come and deny that he had agreed to the issuing of the appeal.

On the other hand, two of the signatories, Hari Singh and Sajjan Singh, R. Ws. 52 and 64 have deposed that a meeting was held at Kot Kapura at the house of one of the signatories, Seth Guranditta Mal, at which it was decided to issue the appeal and they have also stated that

Harbans Singh, Harkirpal Singh and Inder. Singh were present at the meeting and agreed to the use of their names. Thus on the evidence led it would appear to be difficult to uphold the finding of the learned Tribunal that the names of Harbans Singh Harkirpal Singh and Inder Singh were used in the appeal fraudulently by Mehar Singh.

The main reason given for disbelieving the witnesses Hari Singh and Sajjan Singh was that a part of their statement was contradicted by the admission made by Mehar Singh himself that he had borne the expenses of printing the poster, as they said that the expenses were borne by the Committee. The onus lay heavily on the present respondents to establish their charges, and in my opinion they hopelessly failed to discharge the burden on this issue.

9. The question then arises whether, even on the assumption that these posters were in fact printed and distributed by Mehar Singh without the authority of the persons in whose names they purported to be issued, this would amount in any case to the corrupt practice of undue influence as defined in Section 123(2) of the Act. Sub-section (2) reads:

"123(2) Undue influence, that is to say any direct or indirect interference or attempt to interfere on the part of the candidate or his agent, or of any other person, with the free exercise of any electoral right:

Provided that:

(a) without prejudice to the generality of the provisions of this Clause any such person as is referred to therein who:

(i) threatens any candidate, or any elector, or any person in whom a candidate or an elector is interested, with injury of any kind including social ostracism and excommunication or expulsion from any caste or community; or

(ii) induces or attempts to induce a candidate or an elector to believe that he, or any person in whom he is interested, will become or will be rendered an object of divine displeasure or spiritual censure, shall be deemed to interfere with the free exercise of the electoral right of such candidate or elector within the meaning of this clause;

(b) a declaration of public policy, or a promise of public action, or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this clause."

10. In my opinion the learned Tribunal has gone hopelessly wrong in holding that these posters, even if they were not authorised by their purported signatories, fall within the scope of this sub-section. There is in fact very little discussion in the judgment. Regarding the appeal issued in the

name of the Railway Minister, the discussion is in the following passage:

"The definition of undue influence is very wide. Even an attempt to unduly interfere with the free exercise of any electoral right is a corrupt practice. Shri Jagjiwan Ram is a veteran Congress leader and was Minister for Railways during those days. He must be supposed to have great influence over the people. The respondent must be supposed to have adopted this fraudulent device with a view to influencing the voters in his favour by utilising the name of Shri Jagjiwan Ram. In these circumstances I am of the view that the issuing of this poster is a corrupt practice within the meaning of Clause (2) of Section 123 of the Representation of the People Act."

The discussion regarding the second poster is in the following passage:

"He (Shri Karam Chand Bhandari) is a respectable person. It can safely be deduced that the respondent adopted the fraudulent device to give an impression to the voters that Shri Karam Chand Bhandari, in the capacity of Pradhan, City Congress Committee, Faridkot, was supporting him. Any trick, which has its object to ensnarement of voters by inducing to vote contrary to their opinion falls within the definition of undue influence. Even an attempt to unduly interfere with the free exercise of any electoral right is a corrupt practice."

There appears to be no discussion at all once the finding of fact has been given regarding the third poster. It does not appear to me that the learned Tribunal has understood the purport of this sub-section, at all. The proviso in which two illustrations are given of what is meant by "undue influence" admittedly includes the words "without prejudice to the generality of the provisions of this clause", but in matters of this kind, the view has almost universally been expressed by the Courts that in such matters instances of conduct which are to be regarded as falling within the scope of this sub-section must be ejusdem generis.

I find it quite impossible to understand how mere general appeals to voters to support all Congress candidates or a particular Congress candidate can be regarded as interference or an attempt to interfere with the free exercise of an electoral right. To my mind it is clear that the whole purport of the sub-section is that in order that an appeal to voters to support a particular candidate or party shall amount to undue influence or interference with the free exercise of an electoral right, the appeal must contain something of the nature of a threat of undesirable consequences which would result to the voters appealed to in the event of their failure to accede to the appeal.

11. In the present case all the posters are simply and solely appeals to the voters to support the Congress party, and there is not the slightest taint or hint of any threat or pressure. Moreover it is perfectly clear that even if the persons whose names were used in connection with these appeals had not actually given their prior consent and approval, they would certainly not have

disapproved of the contents of the appeals if they had been brought to their notice.

As a matter of fact I am of the opinion that regarding two of the posters the present respondents failed, to establish that the posters were issued without the consent of the alleged signatories and I do not have the slightest doubt that if the Railway Minister had been asked to lend his approval to the first of the posters,--an appeal to the voters and particularly to the Scheduled Castes to support the Congress candidates,--he would have given his approval. I am therefore of the opinion that these three parts of issue No. II were wrongly decided by the learned Tribunal against the successful candidate.

12. The next point is the decision of the learned Tribunal on the sixth issue that Mehar Singh had incurred or authorised expenditure in contravention of law or, in other words, had spent more than Rs 7,000/- on election expenses. The respondents had alleged that during the election campaign Mehar Singh had received large sums of money from various sources and spent them on his election campaign. There is no doubt that they succeeded in providing beyond doubt that during the course of the election campaign Mehar Singh received four sums of Rs. 1,000/- each from the Punjab Pradesh Congress Committee and that during the same period he received sums amounting to Rs. 3,000/- from Brish Bhan acting on behalf of the PEPSU Pradesh Congress Committee.

Regarding the four cheques of Rs. 1,000/- each, issued on behalf of the Punjab Pradesh Congress Committee on various dates, Mehar Singh in his Written statement denied having received these sums, and even when the Bank witnesses were being examined to prove these payments, which were made by cheques, they were cross-examined on lines which indicated an attempt to show that the sums were not actually received by Mehar Singh, and it was only when he was examined as a witness on the 5th of September 1959, after the election petition had been pending for two years and the hearings were nearing their close, that the respondent at last admitted that he had received these sums and utilised them towards his election expenses.

13. As regards the sum of Rs. 3,000/-, the payment was made in the form of two cheques for Rs. 1,000/- and Rs. 2,000/- signed by Brish Bhan in his official capacity in favour, of Mehar Singh himself. The cheques, which have been produced, showed that they were endorsed by Mehar Singh in favour of two firms of Faridkot which in due course obtained payments through their Banks. In the written statement Mehar Singh admitted having received these sums from Brish Bhan, but he alleged that it was on his personal account.

Later the position was changed and it was alleged that the sums were sent to Mehar Singh to be passed on to Giani Zail Singh R. W. 75, Vice President, Punjab Pradesh Congress Committee, who stated that he was generally deputed to be general incharge of the election on behalf of the

said Congress Committee, and these allegations were supported by the evidence of Giani Zail Singh himself and Gurbakhsh Singh Chahal, R. W. 74, who for the first time in the witness-box, on 25th of May 1959, produced three letters which were alleged to have passed between him and Giani Zail Singh during the material period.

As it was for the first time that the existence of any such letters was disclosed, I am inclined to agree with the view of the learned Tribunal that they appear to have been subsequently fabricated to lend colour to the story set up that the money was sent to Mehar Singh for passing on to Giani Zail Singh for use in the general Congress campaign rather than for the use of Mehar Singh himself in connection with his own election. I agree with the following passage in the judgment of the learned Tribunal with the exception of one word:

"No sanctity can be attached to this version. Shri Brish Bhan could say as to whether the amount was given to the respondent or to Giani Zail Singh. Since these two cheques were issued by Shri Brish Bhan in favour of the respondent and Giani Zail Singh had admitted that this amount was given for election purposes and the story with regard to the passing of the said amount to Giani Zail Singh through the said letter has been disbelieved, the only conclusion which can be drawn is that the respondent used this amount for his own election."

The only change I would make in this passage is to substitute the word "received" for the word "used" in the concluding portion.

14. In dealing with these matters it has to be borne in mind that the allegations of corrupt practices are tantamount to criminal charges and the same duty lies on a petitioner in an election petition to establish charges of corrupt practices beyond reasonable doubt just as it is the duty of prosecution to do so in an ordinary criminal case, and it does-not seem to me that it is sufficient merely to establish that somebody has received certain sums of money for a particular purpose when it is the duty of the accuser to establish that the money was also spent, and in the present case even the learned. Tribunal was forced to observe that the petitioners had not been able to prove what the respondent spent in connection with his election.

The return of expenses filed by Mehar Singh shows that his total expenses amounted to Rs. 5,316/ 10/9. Thus what the petitioners had to establish in the present case was therefore that Mehar Singh had actually spent a sum exceeding Rs. 1,683/5/31 ever and above the expenses shown in his return. No positive attempt was made to do so in the course of the evidence, and although the learned counsel for the respondents attempted to show from the return itself that car hire charges for all the days in which certain hired cars were used during the election were not shown, and that the figure shown regarding expenditure on petrol appeared to be unduly low, he was quite unable to convince us that if any such sums had in fact been omitted from the return of

election expenses they would have amounted to anything like Rs. 1,683/-.

In the circumstances it seems to me that the only possible conclusion is that although there is a suspicion, or even a strong suspicion, that Mehar Singh spent Rs. 7,000/-, he received from the Congress bodies, and more on the election campaign, there is also a possibility that he did not spend all the monies which were sent to him for the purpose of his election and the present respondents must be, held to have failed to discharge the onus of proving that Mehar Singh actually spent a sum in excess of Rs. 7,000/-. I am therefore of the opinion that it must be held that the findings, on the basis of which the learned Tribunal held Mehar Singh to be guilty of corrupt practices and therefore set aside his election, are incorrect.

15. There remain now to be considered the findings of the learned Tribunal in favour of Mehar Singh which are attacked on behalf of the respondents. One of these relates to another poster, the subject of issue III(c), which is alleged to contravene Section 123(3) of the Act. This reads:

"123(3) 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 prospects of that candidate's election,"

The said poster, Exhibit P. W. 20/10, is largely pictorial, as its main feature is a picture of Mahatma Gandhi apparently giving his blessing to a standing figure said to represent Mr. U.N. Dhebar, the President of the All India Congress Committee. The reading matter in the poster is simply a general appeal to vote for the Congress candidates and the general impression is of Mahatma Gandhi giving his blessing to the Congress party and its candidates at the election. This is said to contravene Sub-section (3) because the portrait of Mahatma Gandhi is now a national emblem.

Apart from the fact that it was admitted by the learned counsel for the respondents that there are a number of decisions of the Allahabad High Court against him on the point, I should have thought there was no difficulty in deciding that a portrait of Mahatma Gandhi is not a national symbol, since although he is popularly described and regarded as the father of his country, his long affiliation with and leadership of the Congress party in the struggle for independence certainly seem to me to give the Congress party the right to use his name or portrait in appeals to the electors.

16. Among the allegations were a number of charges of alleged bribery which formed the subject of the first issue under the headings (a) to (k). All these charges were held not to be proved and the only finding which is now challenged on behalf of the respondents is that on sub-issue (k). Eight witnesses have appeared and alleged that Mehar Singh had promised that he would get the

allotment of lands of Bahawalpuri displaced persons in Faridkot Tehsil cancelled and instead get them land allotted in Tehsil Sirsa and get the valuation of their lands in Bahawalpur State revised by Government in case they voted for him, and on the 7th or 8th of March he actually caused the Revenue Minister, Mr. Harcharan Singh, to visit some villages to support him in this promise.

It is however, clear, as the learned Tribunal has observed that this demand of the Bahawalpuri refugees as a body was of long standing, and their grievances, if any, could only be met by the Central Government, and I agree with the view of the learned Tribunal that even if the candidate did make a promise that he would try to get grievances remedied and got the Revenue Minister to reinforce his promise, this amounts to only a promise at public action and not individual benefit to such persons as the promise was made to (sic). In my opinion it was correctly found that this did not amount to a corrupt practice.

17. The finding of the Tribunal on issue No. II(a) was also challenged. The facts relating to this are that some time early in February 1957 a man named Master Khanda Ram was murdered at Faridkot by some persons whose identity was unknown at the time, and apparently was never discovered, since it is in evidence that the case remained untraced. The allegations against Mehar Singh were that he had got the officer-in-charge of the police-station at Faridkot to call a Luge number of rickshaw-pullers to the police station on the 26th of February, where at the instance of Mehar Singh it was threatened that the rickshaw-pullers would be involved in the murder case if they did not vote for Mehar Singh.

Some of them were actually detained at the police-station and others were called again on the 28th of February. On the 1st of March a meeting was held and a poster, Exhibit P. W. 20/2, was published. All that is proved from the evidence, however, is that a number of rickshaw-pullers were called to the police-station for questioning regarding the murder and that they were asked to vote for the Congress, and not even the witnesses who appeared for the original petitioners deposed that Mehar Singh was present when they were threatened by the police-officer.

The poster, Exhibit P. W. 20/2, does not contain any allegation against Mehar Singh. On the other hand R. W. 15 deposed in cross-examination that Mehar Singh had asked the police to release the rickshaw pullers as they were poor and could not commit an offence like murder. In my opinion the respondents have hopelessly failed to prove that the police put any pressure on persons to vote for the Congress at the instance of Mehar Singh or any of his agents.

18. Finally the learned counsel for the respondents attacked the findings of the learned Tribunal regarding the two posters which are the subject of issues IV(a) and (b). The expenses of these posters were admittedly borne by Mehar Singh. The first of them, Exhibit P. W. 20/11, was issued in the name of Inder Singh Josh describing himself as Vice President, PEPSU Depressed

Classes League and Organiser, Tehsil Youth Congress, Faridkot, It is an appeal to Harijans and is addressed to all Harijan brethren of Faridkot constituency. The body of it reads;

"Harijan brethren of the Faridkot Constituency You know that the Congress ticket for Faridkot Constituency has been given to S. Mehar Singh and that the Raja of Faridkot is contesting against him as an independent candidate. It is our bounden duty to defeat him badly. The propaganda of the Raja of Faridkot that he will purchase the votes of the Harijans and that he is distributing Rs. 5/- or Rs. 7/- in out colonies, is a challenge to our self-respect. Brothers! The right of vote has not been given to us easily. If you read the history of freedom you will know that many young men went to the gallows; many became the targets of bullets; many families were extinguished and a number of sisters became widows; many children became orphans to get us this right and to make us stand in the row of human beings. Now, you yourself may tell if we have got any right to cast the vote under the influence of greed. On the other hand the Congress is the solitary organisation which has removed the mantle of century old slavery from us and has got us equal lights, after taking the reins of administration of the country into its hands. It is this Raja of Faridkot in whose reign even the

dogs

were cared for but we human beings were not cared for. We were not given service except that of sweeping. Not only this, we were not owners of our own houses. We were being dishonoured from place to place. There was no security for our honour. We could not take tea with freedom at any hotel, nor could we take meals. Even if a literate Harijan somehow managed to take meals, he used to be put in the custody of the police and was to be prosecuted. But today we are free of all these difficulties in the Congress regime. Now, you yourself please tell that when the Raja of Faridkot could not do anything for us in his own reign, what would he do for us by becoming an M. L. A. and what has he done already in these five years? The object of the Raja of Faridkot in fighting for election is not to serve the poor and to strengthen the hands of the Government in their upliftment. His object is to check the rising power of the Harijans and to become a hurdle in the way of their progress. Therefore, Hon'ble Harijan brothers, we should escape from the tricks of the Raja of Faridkot. Whenever he comes to you to ask for votes, you should give him a flat refusal. If he gives you false promises of constructing dharamshalas and wells in certain villages in fact he wants to degrade your lives. Please remember, to give votes to Rajas and Ranis is to strike axe against your own feet and is to play a traitor to the country and the nation. We ought to give votes to the Congress candidate so as to make him successful. To vote for the Congress is to strengthen the hands of Pandit Jawahar Lal Nehru and thereby to illuminate the name of our country and nation in the world."

19. The other poster, Exhibit P. W. 20/12, is in the name of Mehnga Singh, President of the Punjab Bazigar Sabha, Faridkot. It is an appeal addressed to all the Bazigar brethren of Faridkot

constituency in the following words:

"You are requested to make Mehar Singh, a Congress candidate, successful by casting your precious vote for him.

The Raja of Faridkot is the same Raja who collected the goods of Mohammedans and set fire to them so that the poor displaced persons from Pakistan might not put them to use. Now he summons us to the fort and gives us ilaichies and misri through the hands of ladies. In reality he gives us poison to diminish our strength. When he has uttered not a word in our favour in the Assembly during the last five years after becoming an M. L. A., he cannot do anything for us now.

Congress alone is the solitary organisation which carried the voice of the uprooted Harijans and displaced persons living in huts to the Congress Government and secured loans of Rs. 200/- or Rs. 300/- which have even been remitted and rehabilitated the hut dwellers by constructing colonies, and today we are again living a life of comfort. Therefore it is our right that we should give a crushing defeat to the Raja of Faridkot by giving our votes to the Congress candidate. S. Mehar Singh, and we should strengthen the hands of Pandit Jawahar Lal Nehru by giving proof of our being good and proper citizens."

20. It is contended that these posters offend the provisions of Section 123(4) of the Act which reads:

"123(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 the contest, of any candidate, being a statement reasonably calculated to prejudice the prospects of that candidates election."

Regarding both these posters the learned Tribunal decided in favour of the successful candidate simply on the ground that the criticisms of the Raja of Faridkot contained in them related to his conduct as the ruler of the former State of Faridkot and that the allegations contained therein did not reflect on his personal character. This does not appear to be altogether accurate regarding the first of the posters, Exhibit P. W. 20/11, the first paragraph of which contains the allegation that during the election campaign itself the Raja of Faridkot was trying to bribe the Harijans by distributing sums of Rs. 5/- or Rs. 7/- among them, and this certainly appears to be a personal allegation against him.

In order however, for the appeal to be hit by the provisions of Section 123(4), the allegation must be shown by the present respondents to be false or believed to be false or not believed to be true

by the impugned candidate, and there certainly does not appear to be any evidence on the record on the strength of which it can be concluded that this statement was false.

As I have observed earlier in the judgment, the petition was filed by two employees of the Raja of Faridkot and financially supported by him, and the conclusion would not be altogether unjustified that the petition was in fact inspired by him, and if he himself as the defeated candidate had filed the petition it would then have been open to Mehar Singh to challenge the actions of His Highness the Raja and his agents during the election campaign. In that case evidence would have been produced from which a conclusion could have been properly drawn as to whether the allegation of bribery of the Harijans was true or not. As matters stand, the onus is on the original petitioners and they have failed to discharge it in this respect.

21. Otherwise, the allegations in the appeal amount to no more than an argument that since the Raja of Faridkot had done little or nothing for the uplift of the depressed classes either when he was the Ruler of the State or subsequently when he was an M. L. A., it could not be expected that this election would result in any benefit to the Harijans, who ought to support the Congress, the party which had done more than any other body for their uplift.

No evidence has been pointed out to us to show that the Harijans were any better off in Faridkot when the State was ruled by His Highness the Raja than they were anywhere else in India, and I agree with the view of the learned Tribunal that the criticism is of the conduct of His Highness both as a ruling prince and as a politician and not a personal attack on his character.

(21a) The only passage in the other poster, Exhibit P. W. 20/12, which requires any consideration is that in the second paragraph in which it was alleged that the Raja of Faridkot was the same Raja who collected the goods of Mohammedans and set fire to them so that the poor displaced persons from Pakistan might not put them to use which, if true, is undoubtedly a serious allegation which, in the evidence produced by him, Mehar Singh did not really attempt to justify.

Some witnesses appeared on behalf of Mehar Singh and said that shortly after the partition the movable property of Muslims was collected by officials of the State and that the valuable and useful parts of such property were taken into safe custody and valueless and unserviceable articles were burnt, which is very different from the insinuation in the poster that even useful property was burnt for the purpose of preventing displaced persons from Pakistan from deriving the benefit of it.

22. The argument advanced on behalf of Mehar Singh was two-fold, firstly that he was not in any case responsible for the contents of this poster and secondly that the allegation was not a personal one against His Highness the Raja.

23. On the first of these points, as I have said, it is admitted that the expenses of printing this poster were borne by Mehar Singh, and I for one find it difficult to believe that any candidate would pay for, or undertake to pay for, the printing and publication of a large number of copies of a poster to be used in support of his election campaign unless he was satisfied before he committed himself to this expense that he was getting value for his money, and the conclusion must therefore be that Mehar Singh knew and approved of the contents of the poster before he agreed to pay for it,

24. There is, however, more force in the other contention of the learned counsel that the allegation was made against His Highness the Raja not in his personal capacity but as the Ruler of the State. It "is nowhere alleged by any witness that His Highness the Raja himself took any part in burning the property of Mohammedans and whatever was done was certainly done by the officials of the State, and all that the allegation really amounts to is that these things were done, if indeed they were done, during his reign.

It is to be remembered that the appeal contained in this poster was addressed to a very limited section of the community, namely the Bazigars and on the whole I am of the opinion that the offending passage must be held not to be in relation to the personal character of His Highness the Raja of Faridkot and also that it is not a statement reasonably calculated to prejudice the prospects of his election.

25. The result is that I would accept the appeal and set aside the order of the Tribunal declaring the election of the appellant Mehar Singh to be void. I am, however, of the opinion that it is a suitable case in which the parties may be left to bear their own costs and would order accordingly.

Gurdev Singh, J.

26. I concur that the appeal be accepted and the parties should bear their own costs.