A 1969 is invalid and the action taken or deemed to be taken in exercise of the powers under the Act is declared unauthorised. Petition No. 222 is dismissed. There will be no order as to costs in these three petitions.

K.B.N.

DEV KANTA BAROOAH

v.

GOLOK CHANDRA BARUAH & ORS.

February 12, 1970

[S. M. SIKRI AND V. BHARGAVA, JJ.]

Representation of the People Act (34 *of* 1951), *s.* 123(4)—*Statements in leaflet—Comment on educational qualifications of candidate—Statement of facts and expression of opinion on the political position of candidate—If amounts to corrupt practice.*

The first respondent studied for his intermediate examination in two colleges one after the other, but never sat for the examination. He entered government service as a clerk. Some time after 1943 he resigned from service and joined the military contract business which was being carried on by his brothers. In 1952, though he was a member of the Congress party, he stood for election against the Congress candidate after promising not to do so. Thereafter, he became Chairman of a Municipality and during his tenure as such, several thousand rupees were taken away from the Treasury on signatures resembling the first respondent's signature, and some persons were prosecuted. Also, while he was Chairman, he issued an order to the effect that salaries of sweepers were to be paid by the head clerk. In November 1964, the first respondent resigned his chairmanship. The head clerk, instead of paying the sweepers, in December, misappropriated the money. When the misappropriation was discovered by the Vice-Chairman, the head clerk committed suicide in December 1964. In the 1967 election, the first respondent again stood for election to the State Legislature against the Congress candidate, once again breaking his written promise not to do so. However, the appellant was declared elected. The first respondent challenged the election of the appellant. One of the grounds in the election petition was that the following false statements as to the personal character of the first respondent, reasonably calculated to prejudice his prospects of election, had been published in a leaflet with the consent of the appellant :

(1) That the first respondent 'after rolling from *several* colleges failed to pass the intermediate examination;'

(2) that during the first respondent's tenure as Chairman there were instances of corruption and chaos and that the criminal case in connection with the taking of money from the treasury was *pending hearing* at the time of the publication of the leaflet;

(3) that 'at that time' the head clerk committed suicide; and

(4) that by taking military contracts he helped the British Government in India during the 1942-movement and by his standing for election against Congress candidates he was guilty of 'treachery' *Desadrohita*) and 'breach of faith' (*Vishwasghatakta*).

On the question whether statements constituted corrupt practice under s. 123(4) of the Representation of the People Act, 1951,

HELD : (1) In an election it is open to a candidate to show that his rival candidate is lacking in knowledge and education and that he is not capable of managing the affairs in a public body. The statement in the leaflet only stated that he failed to pass the examination and not that he

A failed at the examination. There was a slight exaggeration when the leaflet referred to *several* colleges, but it could not be held to be a false statement affecting the personal character, or conduct of the first respondent. [668 B-E]

(2) The imputation was as to the mismanagement of the affairs of the Municipality by the first respondent, indicating that he was not a good administrator and not, that he was himself corrupt. That part of B the statement that the criminal case was then pending, though incorrect, did not cast any as person on the conduct or character of the first respondent. [669 H; 670 A-B]

(3) The expression 'at that time' interpreted literally would mean that the suicide was committed while the first respondent was the Chairman, which was not true, because, he had resigned earlier. But since the opportunity for the head clerk to misappropriate the money occurred while C the first respondent was the Chairman, it must be held that the allegation made in the clause is also substantially correct. Further, there was no suggestion in the statement that the first respondent himself was corrupt or that the suicide was the result of his personal corruption. [672 F-H]

(4) The vernacular words used for 'treachery' and 'breach of faith' though harsh, were not such as to lead the voters to think that the first respondent had a low moral character. The leaflet was published in reply D to the first respondent's leaflet as to why he left the Congress, giving reasons as to why he was expelled from the Congress. Care was taken to give the facts from which inferences were being drawn and the voters could very well perceive for themselves whether the inference, which was drawn and expressed in strong terms, was justified or not. The treachery or breach of faith towards the country refers to the first respondent's help to the British by taking military contracts at about the time of the E 1942-movement, and his treachery or breach of faith towards the Congress has reference to his standing for election as against the Congress nominee. Therefore, since the facts were given and only inferences were drawn, the words used at the time of putting down the inferences must be held to be only expressions of opinion, on the first respondent's political position and do not themselves connote any statement of facts involving moral depravity. Hence, the publication of the leaflet, cannot be held to constitute corrupt practice under s. 123(4) of the Act. [667 D-E, 673 F C-F, H; 674 H; 675 A, D, F-G; 676 D-E]

Guruji Shrihari Baliram Jivatode v. *Vithal Rao and Ors.* [1961] 1 S.C. Cases 82 and *Inderlal* v. *Bal Singh,* [1962] Supp. 3 S.C.R. 114, followed.

Kumara Nand v. *Brijmohan Lal Sharma,* [1967] 2 S.C.R. 12 distinguished and explained.

G *Kultar Singh* v. *Mukhtiar Singh,* [1964] 7 S.C.R. 790, *Cumberland (Cockermouth Division)* Case, (1901) O'M&H 155, *Ellis National Union of Conservative Constitutional Association* 109 L.T. Jo 493, *Parker's Election Agent and Returning Officer,* 6th Edn. p. 91, *Halsbury's Laws of England* 3rd Edn. Vol. 14, para. 394 and *Rogers on Elections* Vol. II, 20th Edn. p. 368, referred to.

T. K. Gangi Reddy v. *M. C. Anjanaya Reddy,* [1960] 22 E.L.R. 261, *Mohan Singh* v. *Bhanwarlal and Ors.* [1964] 5 S.C.R. 12 and *Sheopat* H *Singh* v. *Ram Pratap,* [1965] 1 S.C.R. 175, distinguished.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1701 of 1968.

Appeal under s. 116-A of the Representation of the People Act, 1951 from the judgment and order dated July 4, 1968 of the Assam and Nagaland High Court in Election Petition No. 3 of 1967.

C. K. Daphtary, S. Mohan Kumaramangalam, S. K. Nandy, V. J. Francis, R. K. Garg, S. C. Agarwala, D. P. Singh and *S. Chakravarty*, for the appellant.

P. K. Chatterjee, R. B. Datar, B. M. Mahanto and *Rathin Das.* for the respondents.

The Judgment of the Court was delivered by

Bhargava, J. The appellant, Dev Kanta Barooah, was declared elected at the last General Elections to the Legislative Assembly of Assam in 1967, defeating the four rival candidates who are respondents 1 to 4 in this appeal. Respondent No. 1, Golok Chandra Baruah, filed an election petition challenging the election of the appellant on various grounds, including a charge that false statements as to the personal character of respondent No. 1 had been published with the consent of the appellant, thus constituting a corrupt practice under section 123(4) of the Representation of the People Act, 1951 (hereinafter referred to as "the Act"). This is the only ground which has been accepted by the High Court of Assam and Nagaland and the election of the appellant has been set aside on this ground. In this appeal, consequently, the only question that falls for decision is whether the High Court was right in setting aside the election of the appellant on the ground of corrupt practice having been committed within the meaning of s. 123(4) of the Act. This corrupt practice was alleged by respondent No. 1 to have been committed by the appellant by publication of a leaflet which is, for convenience, reproduced below :—

> "Why Golok Barua was driven away from the Congress ?
>
> (Picture of a pair of bullock with yoke)
>
> Humble submission,
>
> One leaflet bearing full of downright falsehood and false allegation with the Caption "Why I have left the Congress" has been published and distributed by Sri Golok Chandra Barua in the Samaguri Constituency. The patriot voters of Samaguri have sufficient experience and political consciousness. They would not believe the abominable and false publicity of Shri Golok Barua. . Still for the knowledge of the public a brief description of the activities of public life of Shri Barua has been published. From that it will be understood that

A Sri Golok Barua is not an actual congress man. He is a driven-out congressman wearing a mask.

1. Golok Barua after rolling from several Colleges failed to pass the I.A. and at first became a copyist at the Katchery and thereafter became a Clerk.

B At the mass-movement of '42 he earned some money by doing Military Contracts.

2. In 1952 by entering in the Congress sought nomination from the Congress from the Samaguri Constituency. The Congress did not give him nomination as in the '42 Movement he helped the British and revolted C against the Country. After breach of promise he was badly defeated by standing against Shrimati Usha Barthakur who was a Congress nominee.

3. Again by entreaties he joined the Congress and on the sudden death of Late Pratap Chandra Sarma D Shri Golok Barua became the Chairman of Nowgong Municipality. Please note some of the instances of injustice and chaos during his tenure of Office.

(Ka) During his time several thousand Rupees were taken away from the Treasury unlawfully on signatures resembling to those of his signatures. The matter is E now pending for hearing.

(Kha.) When a huge amount of money withdrawn from the National Savings was misappropriated the Govt. Examiner of Accounts declared Sri Golok Barua alone as guilty.

F (Ga) At that time also on account of corruption in the Municipality alone late Dharmeswar Sarma the then Head Clerk of his time had to commit suicide.

(Gha) While Sri Golok Barua was the Chairman at night like drunkard went to the Ex-Chairman Dr. Birendra Kishore Guha and not finding Dr. Guha be- G haved his wife and daughter unmannerly. After that assaulted Dr. Guha with shoes in presence of many persons. On that offence Sri Golok Barua was compelled to resign his Chairmanship by the Executive Committee of the District Congress Committee.

H 4. This time Sri Golok Barua sought for nominanation from the Congress as a candidate to the Parliament from Kaliabar Constituency and a candidate to the Legislative Assembly from the Barhampur Constituency

But the Congress refused to give nomination due to his conduct and Character and due to his treachery towards the Country and the Congress. Out of that grudge he, again, by breaking his written promise to the effect that he would not go against the Congress if he was not given nomination by the Congress, has stood as a non-party candidate again from the Samaguri Constituency and he has published untrue and false propaganda against the Congress.

5. Due to the offence of the treachery he has been completely driven away from the Congress for a period of six years by the Assam Provincial Congress Committee. As a matter of fact Sri Golok Barua has been driven out from the Congress. These facts have been published for the knowledge of the vigilant and patriot electors of Samaguri.

Nowgong. Nowgong District Congress
5-2-67 Election Committee."

The original leaflet was in Assamese and the above version of it is in accordance with the official translation prepared in the paper book. During the course of arguments, however, it was brought to our notice that, at some places, the translation did not correctly represent the meaning conveyed in Assamese, so that the Assamese words were read out to us. Further, our attention was also drawn to the translation accepted by the learned Judge of the High Court who tried the election petition and who had some knowledge of Assamese language. We shall indicate later where we consider that the translation reproduced above cannot be accepted as correctly representing the text in Assamese language.

The ground taken in the election petition was that this leaflet contained false statements as to the personal character or conduct of respondent No. 1 which were reasonably calculated to prejudice his prospects of being elected in this election. The learned trial Judge held that some of the statements of fact made in the leaflet did relate to the personal character or conduct of respondent No. 1 and that, except for two such statements which were proved to be true, they were false to the knowledge of the appellant. It was also held that this leaflet had been published and distributed with the consent of the appellant, so that the election of the appellant was set aside. In this appeal, Mr. Daphtary, appearing on behalf of the appellant, challenged the decision of the High Court in two respects. The first contention raised by him was that the statements in this leaflet, which have been held

A to be false, did not relate to the personal character or conduct of respondent No. 1, and that the statements which did relate to the personal character or conduct of respondent No. 1 were proved to be true, so that the provisions of s. 123(4) of the Act were not attracted. The second contention was that the High Court was not right in holding that this leaflet had been published and distributed with the consent of the appellant. Since, after hearing arguments of learned counsel for both parties, we have come to the view that the first point raised by Mr. Daphtary must be accepted, we did not consider it necessary to hear counsel on the second point relating to proof of consent of the appellant to the publication of this leaflet.

C The leaflet purports to have been published on behalf of the Nowgong District Congress Election Committee. It is admitted that respondent No. 1 wanted to be sponsored as the candidate for the Legislative Assembly by the Congress Party in this general election. The Congress Party, however, sponsored the candidature of the appellant, whereupon respondent No. 1 stood for D election as an independent candidate. In this background, respondent No. 1 issued a leaflet explaining why he had left the Congress and it was in reply to that leaflet that the Nowgong District Congress Election Committee issued the leaflet in question. The leaflet, thus, begins with the caption "Why Golok Barua was driven away from the Congress?" The leaflet thereafter E purports to give the reasons why he was expelled from the Congress, and the facts stated in it are divided into five paragraphs.

The first paragraph mentions that respondent No. 1 after rolling from several Colleges failed to pass the Intermediate Examination and at first became a copyist at the Kachery and there- F after became a Clerk. At the mass-movement of 1942, he earned some money by doing Military Contracts. The High Court has held that this paragraph amounts to publication of false statement covered by s. 123(4) of the Act inasmuch as it is incorrect that respondent No. 1 rolled from several colleges and that at the mass movement of 1942 he earned some money by doing military G contracts. The evidence disclosed that respondent No. 1 studied for his Intermediate Examination in only two Colleges one after the other and did not move from college to college. It was also found as a fact that he did not pass the Intermediate Arts Examination and that the reason was that he could not appear at the Examination at all due to the death of his father. He did not H fail at that examination. The further finding was that he himself was in government service at the time of the movement of 1942, so that he could not have done any military contract work in that year. It was only later on that he resigned and joined the

military contract business which was being carried on by his two brothers. The High Court was of the view that the publication of these statements was bound to lower respondent No. 1 in the opinion of the voters and, consequently, this publication amounted to a corrupt practice. As urged by Mr. Daphtary, we are unable to agree that the publication of the facts in this paragraph can be held to amount to false statements as to the personal character or conduct of respondent No. 1. In an election, it is always open to a candidate to show that his rival candidate is lacking in knowledge in education and is not capable of managing the affairs properly in any public body. The intention in the first part of paragraph 1 of the leaflet was to inform the voters of the educational qualifications of respondent No. 1. He did move from one college to a second one during his period of study for the Intermediate Arts Examination. May be, that there is a slight exaggeration when the leaflet mentions that he rolled from several colleges; but such an exaggeration is quite natural on occasions when canvassing is going on for an election. It is to be noted that the leaflet does not state that respondent No. 1 failed at the Intermediate Arts Examination. All it says is that he failed to pass that Examination which has been admitted as being perfectly true by respondent No. 1 himself. He failed to pass, because he did not appear at the examination. Such a statement cannot, in our opinion, be held to be a false statement affecting the personal character or conduct of respondent No. 1. The second part of this paragraph can be conveniently dealt with while discussing the facts mentioned in paragraph 2.

In paragraph 2 of the leaflet, the reason why the Congress did not give him nomination is given. It is stated, that in the 1942 movement, he helped the British and revolted against the country. The expression "revolted against the country" is a translation for the Assamese word "Deshdrohita" (देशद्रोहिता). It is true that the High Court has come to the finding of fact that in 1942 respondent No. 1 was in government service working as a Clerk and it was only later on, after 1943, that he actively participated in the business of his brothers of taking military contracts for the British. The trend of the evidence, however, shows that his brothers had been carrying on the military contracts business even earlier than 1943. Even for the later period, respondent No. 1 tried to deny that he actually participated in the military contract business with his brothers; but, when cross-examined in detail and confronted with a power of attorney in his favour, he had to make admissions which clearly show that he was

A taking part in that business. It appears to be quite likely that, even before he actually resigned government service and joined the business of his brothers, he may have been assisting them, so that the allegation that he helped the British in 1942 movement by taking military contracts cannot be said to be a false statement; at best, there may be a slight errors about the period
B during which he did that work. Again, the aspect that he was helping the British by taking military contracts relates to a reflection on his political conduct in siding with the British Government rather than joining the Congress which was carrying on a movement against the British for achieving independence of the country. It was in this background that his activities were described by
C using the word "Deshdrohita" in this pamphlet. Whether it amounted to "deshdrohita" or not may be a disputed question. Members of the Congress, who were carrying on the agitation against the British for achieving independence of the country, could very legitimately think that any one who helped the British at that time was guilty of "deshdrohita" inasmuch as his activities were against the interests of our country. This expres-
D sion was also, therefore, used to describe the nature of his activities which, in fact, related to the political situation at that time. It cannot be said that this paragraph reflects on the personal character or conduct of respondent No. 1, as there is no imputation of any depravity or immorality in this paragraph.

E Paragraph 3 is the principal paragraph in which the conduct of respondent No. 1 has been criticised. Admittedly, he was the Chairman fo the Nowgong Municipality, and the principal part of this paragraph asks the voters to note some of the instances of injustice and chaos during his tenure of office. In Assamese, the two words which have been translated as "in-
F justice" and "chaos" were "Durniti" (दुर्नीति) and "Arajakta" (अराजकता). Our attention was drawn by learned counsel for respondent No. 1 to the statement of Devendra Nath Bora, the writer of this leaflet, where he stated that he meant by these words "corruption" and "lack of administration". The High Court took these words to mean "corruption" and "anarchism" as these are the English words used in the judgment of the High
G Court. It may, however, be noted that, in this part, it is not stated that respondent No. 1 himself was corrupt. The imputation only is that, during his tenure of office, there were instances of corruption and chaos. Thereafter, the four instances are given. It cannot, therefore, be held that the leaflet was intended to convey to the readers that respondent No. 1 was himself
H corrupt. The impression that would be expected to be created would be that be that his administration as Chairman of the Municipality was no unsatisfactory that corruption and chaos prevailed in the affairs of the Municipality. The imputation,

therefore, was as to mis-management of the affairs of the Municipality by respondent No. 1, indicating that he was not a good administrator. The leaflet was not intended to convey to the voters any reflection on the personal character of respondent No. 1.

In clause (Ka), the instance given is that, during his time, several thousand rupees were taken away from the Treasury unlawfully on signatures resembling his signatures and that the matter was still pending for hearing when the leaflet was issued. Mr. Daphtary drew our attention to the admissions made by respondent No. 1 himself when he was in the witness-box that several thousand rupees were, in fact, drawn from the Treasury in the municipal accounts on the basis of some cheques containing signatures which resembled the signature of respondent No. 1. In substance, therefore, the truth of the statement contained in this clause is admitted. The only part of the statement in this clause, which is found to be incorrect, is that the matter was pending for hearing even at the time of the election. It appears that the criminal case relating to that incident had been decided earlier. The part of the statement, which was not true, did not, by itself, contain any statement relating to the conduct or character of respondent No. 1. The first sentence, which cast reflection on respondent No. 1 by indicating that the management of the affairs of the Municipality in his time was not good and successful, has been admitted to be true. Consequently, this clause cannot be held to constitute corrupt practice under s. 123(4) of the Act.

In clauses (Kha) and (Cha), there are, undoubtedly, statements which reflect on the personal character and conduct of respondent No. 1. Clause (Kha) mentions that, when a huge amount of money withdrawn from the National Savings was misappropriated, the Government Examiner of Accounts declared Sri Golok Barua alone as guilty. The word "guilty", in fact, is not the correct translation for the Assamese word which was "Daee" दाई The learned Judge of the High Court translated this word as "responsible" in his judgment, which appears to us to be correct. The learned Judge also held that the allegation contained in this clause has been proved to be true. The report of the Government Examiner of Accounts was brought to our notice. In that report, the Auditor wrote :—

> "The entire responsibility for their encashment and credit to the fund rests with him and the fact that the accounts were maintained by the Head Assistant does not absolve the Chairman of his responsibility in this connection. The Chairman, Sri G. C. Barua, stands

A fully liable for the loss, which should be recovered from him now."

The contents of clause (Kha) do not go beyond what was found by the Auditor in his report, the relevant part of which has been reproduced by us above. It is true that this statement, to some B extent, reflects on the personal character of respondent No. 1 inasmuch as it states that he was held responsible for the misappropriated money; but, that being a true fact, its publication has rightly been held by the High Court not to amount to corrupt practice.

C Similarly, in clause (Gha), there is mention of an incident when respondent No. 1, while Chairman of the Municipality, is alleged to have gone at night like a drunkard to the house of Ex-Chairman, Dr. Birendra Kishore Guha, and, not finding Dr. Guha, "behaved with his wife and daughter unmannerly". It is further stated that, after that, he assaulted Dr. Guha with shoes D in the presence of many persons, and that, on that offence, he was compelled to resign the Chairmanship by the Executive Committee of the District Congress Committee. The High Court has held that the facts stated in this clause are also true. The only point that Mr. Chatterjee, counsel for respondent No. 1, could urge was that, according to the evidence of the daughter of Dr. E Guha, there was no misbehaviour with the wife and the mention of the wife in this clause was intended to convey an idea of some immoral behaviour on the part of respondent No. 1 which is not supported by any statement of fact. We have examined the evidence of the daughter, Miss Sipra Guha *alias* Miss Lily Guha, who related what happened during that night. According to her, she and her mother were inside the house when some one knocked at F the door calling out "Dr. Guha, Dr. Guha". At the instance of her mother, she opened the door and the gentleman who was there caught hold of her clothes just under the neck and pulled her towards him. At this, she shouted for her mother who came to the scene and recognised respondent No. 1. Respondent No. 1 then angrily asked where Dr. Guha was and whether he was G inside the house. Her mother replied to him that her father had gone to see the Jatra performance. She also got angry and protested against his being there at such a time. She also found smell of alcohol coming from the mouth of respondent No. 1. The version given by this witness seems to fully justify the statement contained in clause (Gha). The mention of the wife is with H reference to unmannerly behaviour towards her. It does not say that any attempt was made by him to assault her. The High Court was, therefore, quite correct in recording the finding that these allegations contained in this clause were true and, not

being false statements, they could not constitute corrupt practice under s. 123(4) of the Act. A

There remains clause (Ga) of paragraph 3 in which it is stated that, at that time also, on account of corruption in the Municipality alone, late Dharmeswar Sarma, the then Head Clerk of his time, had to commit suicide. Some of the ingredients of this clause have been found by the High Court to be incorrect. The facts found show that, while respondent No. 1 was Chairman, he issued an order to the effect that the salaries of sweepers were to be paid by the Head Clerk instead of the Accountant who was to hand over the money for that purpose of the Head Clerk Respondent No. 1 resigned the Chairmanship in November, 1964 and his resignation was accepted on 21st November, 1964. It was subsequently in the month of December, 1964 that the salary of the sweepers was not paid by the Head Clerk, Dharmeswar Sarma, who had received the money for this purpose. Under the orders of respondent No. 1, the payments had to be made by the Head Clerk in the presence of the Chairman or the Vice-Chairman or some other member nominated for the purpose by the Chairman. The Vice-Chairman held Dharmeswar Sarma responsible for the money when he found that the sweepers had not been paid and, thereupon, directed Dharmeswar Sarma to make good the shortage and pay up all the sweepers by 1 p.m. on 10th December, 1964 positively, failing which legal action would be taken against him. This order was not carried out and, instead, on 10th December, 1964, Dharmeswar Sarma committed suicide. These facts, no doubt, indicate that the statements made in clause (Ga) of paragraph 3 are not strictly correct. The main allegation that Dharmeswar Sarma, the Head Clerk, committed suicide and that it was the result of corruption which was going on in the Municipality are borne out by the facts found. The expression used "at that time" in this clause, if interpreted literally, would mean that the suicide was committed while respondent No. 1 was himself the Chairman which is not true inasmuch as he had resigned earlier. It is, however, to be noted that the opportunity for Dharmeswar Sarma to misappropriate the money occurred only because of an order which had been passed earlier by respondent No. 1 while he was Chairman of the Municipality. In these circumstances, it has to be held that the allegation made in this clause is also substantially correct. The allegation was intended to convey that there was corruption in the Municipality at the time when respondent No. 1 was the Chairman and that it was so has been found to be true. There was no suggestion in this clause that respondent No. 1 himself was corrupt and that the suicide was the result of his personal corruption. Thus, this part of the

B C D E F G H

A leaflet also cannot constitute corrupt practice under s. 123(4) of the Act.

Then, we come to paragraphs 4 and 5 of the leaflet in which the main objection is to the mention of his treachery towards the country and the Congress. In paragraph 4, it is stated that B the Congress refused to give nomination due to his conduct and character and due to his treachery towards the country and the Congress, while paragraph 5 states that, due to the offence of treachery, he had been completely driven away from the Congress for a period of six years by the Assam Provincial Congress Committee. The word "treachery" is a translation for the Assamese word "Vishwasghatakta" (विश्वासघातकता) which probably can C be more appropriately translated as "breach of faith", though treachery may also be one of the translations for this word. On the face of it, the treachery or breach of faith towards the country again refers to his help to the British by taking military contracts at about the time of the movement of 1942, while his treachery or breach of faith towards the Congress has reference to his stand- D ing as a candidate against the Congress nominee in the earlier election as well as in this election. Learned counsel for respondent No. 1 urged that the terms used in this leaflet, *viz.*, "Deshdrohita" and "Vishwasghatakta" are very strong terms and are bound to be taken by voters in such a light that they would have a low opinion about the character of respondent No. 1. It is, E however, to be noted that these words have been used in the context of facts on the basis of which the writer of this leaflet thouht that respondent No. 1 had been guilty of "Deshdrohita" and "Vishwasghatakta". It is, therefore, really an expression of opinion about respondent No. 1 based on facts. These words do not themselves connote any statement of fact which can be F said to be false.

In this connection, learned counsel for respondent No. 1 relied on the decision of this Court in *Kumara Nand* v. *Brijmohan Lal Sharma*,(1) where, in a poem, the candidate was described as the "greatest of all thieves". The Court held that this description was not a mere opinion and that, when the candidate G was called the greatest of all thieves, a statement of fact was being made as to his personal character or conduct. There are two features which distinguish that case from the case before us. First, a statement that a person is a thief clearly imputes to him moral depravity, while statements saying that he has committed "Deshdrohita" or "Vishwasghatakta" only reflect on his conduct in the political field and do not bring in any element of moral H depravity. Secondly, in that case, no facts were given from which an inference might have been sought to be drawn that

(1) [1967] 2 S.C.R. 127.

the candidate was the greatest of all thieves, while, in the case before us, objectionable words have been used after giving the facts, on the basis of which it was held that the conduct of respondent No. 1 had been undesirable so as to be described as "Deshdrohita" and "Vishwasghatakta". Counsel for the appellant, in this connection, relied on a passage at page 91 of Parker's Election Agent and Returning Officer, 6th Edition, which is to the following effect :—

> "But the following have been held not to be within the provision :— a statement which imputed that the candidate was a traitor, and was one of certain persons who were in correspondence with the enemy shortly before the South African war broke out in 1899."

This passage is based on the decision in *Ellis* v. *The National Union of Conservative and Constitutional Association,* 109 L.T. Jo. 493 which book has not been available to us. Based on the same case, it is stated in note (a) at page 227 under paragraph 394 of Halsbury's Laws of England, 3rd Edn., Volume 14, that :

> "The words 'Radical traitors' were held to be not within the provision, as being a statement of opinion rather than of fact."

Counsel for respondent No. 1, however, drew our attention to the fact that in the case of *Kumara Nand*(1) this Court did not rely on Parker's version of the decision on the ground that in Rogers on Elections, Vol. II, 20th Edn., at page 368, the facts given indicated that there was no statement of fact with respect to the candidate himself that he was a traitor and all that was said was that Radical members of the House of Commons were in correspondence with the Boers and the candidate happened to be one of the Radical members. On this ground, the Court did not choose to accept the dictum reproduced by Parker. It, however, appears that, even in Rogers on Elections, it was mentioned, in addition to the facts noted in that case by this Court, that "any false statements were of opinion only and not of fact". This part of the sentence in Rogers on Elections does not seem to have been brought to the notice of the Court. It appears that, apart from the allegation that Radical members of the House of Commons were in correspondence with the enemy, there must have been an inference drawn that the candidate was a traitor and it is with reference to this last statement that Rogers mentions that the false statements were held to be matters of opinion only and not of fact. In any case, even if we do not rely on the principle laid down in that case in England, we are still of the view that, in the present case where the statements

(1) [1967] 2 S.C.R. 127.

A of fact are given and only inferences are drawn, the words used at the time of putting down the inferences have to be held to be expressions of opinion and not statements of fact.

Reliance was also placed on behalf of respondent No. 1 on the quotation from the decision in *T. K. Gangi Reddy* v. *M. C. Anjaneya Reddy*(1) reproduced in the case of *Sheopat Singh* v. B *Ram Pratap*(2) which is to the following effect :—

> "The words 'personal character or conduct' are so clear that they do not require further elucidation or definition. The character of a person may ordinarily be equated with his mental or moral nature. Conduct connotes a person's actions or behaviour.....What is C more damaging to a person's character and conduct than to state that he instigated a murder and that he was guilty of violent acts in his political career?"

This view expressed in that case is also not applicable to the case before us, because here the objectionable words have been very clearly and obviously used as inferences drawn by the writer D from statements of fact given in the leaflet itself. Reference was also made by counsel for respondent No. 1 to the decision of this Court in *Mohan Singh* v. *Bhanwarlal & Others*(3) where it was held that the leaflets in question clearly implied that the candidate had misappropriated the fund collected by him, and this was held to be a statement of fact constituting a corrupt prac- E tice under s. 123(4) of the Act. In that case, again, the imputation was of a nature that affected the personal character of the candidate indicating that he had been dishonest in misappropriating money, while, in the case before us, no such facts have been found.

F It is quite clear that these words "Deshdrohita" and "Vishwasghatakta" have been used in this leaflet only to bring into light the conduct of respondent No. 1 which was adverse to the policies of the Congress and, at one stage, against the interests of the country. Possibly, milder words could have been used to describe his conduct on those occasions, but even the use of strong words is not very unnatural at the time of elections. In judging G whether the use of such words can be held to be a corrupt practice, we have to keep in view the principles indicated by this Court, how such document should be read, in the case of *Kultar Singh* v. *Mukhtiar Singh*(4). The Court held :

> "The principles which have to be applied in construing such a document are well-settled. The document H must be read as a whole and its purport and effect deter-

(1) [1960] 22 E.L.R. 261.
(2) [1965] 1 S.C.R. 175, 179.
(3) [1964] 5 S.C.R. 12.
(4) [1964] 7 S.C.R.490.

mined in a fair, objective and reasonable manner. In reading such documents, it would be unrealistic to ignore the fact that when election meetings are held and appeals are made by candidates of opposing political parties, the atmosphere is usually surcharged with partisan feelings and emotions and the use of hyperboles or exaggerated language, or the adoption of metaphors, and the extravagance of expression in attacking one another, are all a part of the game, and so, when the question about the effect of speeches delivered or pamphlets distributed at election meetings is argued in the cold atmosphere of a judicial chamber, some allowance must be made and the impugned speeches or pamphlets must be construed in that light. In doing so, however, it would be unreasonable to ignore the question as to what the effect of the said speech or pamphlet would be on the mind of the ordinary voter who attends such meetings and reads the pamphlets or hears the speeches."

Examined on these principles, it would be clear that the words that were used, though harsh, were not such as to lead the voters to think that respondent No. 1 had a low moral character. Care was taken to give the facts from which inferences were being drawn and the voters could very well perceive for themselves whether the inference, which was drawn and expressed in these strong terms, was justified or not. Schofield in his book on Parliamentary Elections, 2nd Edition, at page 437, has reproduced a quotation from a decision of Darling, J., in *Cumberland (Cockermouth Division)* Case(1), where he said :—

"You must not make or publish any false statement of fact in relation to the personal character or conduct of a 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; 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. If 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 statements in order to be an illegal

(1) [1901] 5 O' M. & H. 155.

A practice, must relate to the personal character and personal conduct."

This passage was quoted with approval by this Court in *Guruji Shrihari Baliram Jivatode* v. *Vithalrao and Others*(1). It is to be noted that Darling, J., held that a false statement of fact, which B deals with the political position or reputation or action of a candidate, cannot be held to be a corrupt practice. The imputations that have been made in paragraphs 1, 2, 4 and 5 of the leaflet and which have been found to be false in the case before us clearly relate to the political position, reputation or action of respondent No. 1. A similar distinction was also drawn by this Court in the C case of *Inder Lal* v. *Lal Singh*(1). All these cases clearly indicate that imputations of the type which are in question in the leaflet before us and which may, to some extent, be false or inaccurate cannot be held to be false statements as to the personal character of respondent No. 1 and cannot, therefore, constitute corrupt practice under s. 123(4) of the Act. The only statements, which D did relate to the personal character of respondent No. 1, have been found to be true.

In support of his argument, counsel for respondent No. 1 drew our attention to the evidence of some of the witnesses examined on his behalf in order to show what was the reaction of this leaflet on the various voters. P.W. 2, Shashi Nath Bardoloi, stated that his E own reaction was that this leaflet had very much scandalised respondent No. 1 and, when asked what he remembered about the leaflet, he mentioned that respondent No. 1 could not pass the Intermediate Examination, though he rolled from College to College, whereafter he joined as a copyist and then became a clerk at Nowgong Court, that there was an allegation that somebody F withdrew some money from the treasury with the forged signature of respondent No. 1 about which a case was pending, and that, for his fault, one Head-clerk of the Municipality committed suicide. It is to be noticed that none of the facts given in the leaflet casting reflection on the personal character of respondent No. 1 seem to have impressed him or stuck in his mind. He also stated that G some persons, who were going to vote for respondent No. 1, decided not to do so after the issue of this leaflet; but, when asked to name even one of those persons, he could not do so.

The evidence of the next witness P.W. 3, Golok Chand Saikia, is even more unsatisfactory, because he did not give his own reaction to the leaflet at all and only stated that, after its publication, H most of the people who were in favour of respondent No. 1 changed their minds about respondent No. 1, but, again, he could not give

(1) [1969] 1 S.C. Cases 82. (2) [1962] 3 Supp. S.C.R. 114.

the name of even one single person who wanted to vote for respondent No. 1 and did not in fact do so. A

P.W. 4 is Bhola Ram Das. According to his evidence, he carried the impression that this leaflet had stated that respondent No. 1 had misappropriated some money from the Congress and, consequently, he changed his mind about giving vote to him on receipt of this leaflet. On the face of it, there is nothing at all in the leaflet to justify his inference, as there was no suggestion at all of any misappropriation of money by respondent No. 1, much less money belonging to the Congress. He purported to state that he had read the leaflet himself, though, when cross-examined and asked if he could read Assamese, he admitted that he was almost illiterate. B C

The next witness P.W. 5, Hara Kanta Bora, also stated that, on reading the leaflet, he got the impression that respondent No. 1 was a man of bad character, the main impression which was carried by him being that respondent No. 1 had some bad relationship with the wife of Dr. Guha. To test the veracity of this witness, he was asked which candidate he had worked for in this election and he stated that he had worked for the appellant, having been appointed as his polling agent. When further cross-examined, he was unable to state what the duties of a polling agent were, while evidence has been led to prove that another person of the same name had worked as polling agent of the appellant. This leads to the inference that this witness falsely posed to be the polling agent of the appellant and no reliance can, therefore, be placed on the evidence of such a witness. D E

The last witness, whose evidence was brought to our notice, is P.W. 6 Liladhar Barua who stated that, on reading this leaflet, he gathered the impression that respondent No. 1 was a man of bad character and that it was also stated in it that respondent No. 1 took the side of the military and committed atrocities on the people in 1942 movement period. In his case, again, the mention of commission of atrocities in 1942 movement could not have been inferred from any statement at all contained in the leaflet. Counsel for respondent No. 1 stated that the witness knew that atrocities were committed in 1942 and, consequently, he drew this inference from the mention of respondent No. 1 in connection with that movement stating that he had sided with the British. This witness was scarcely five years old in 1942 and he could not have any recollection of atrocities committed about the year 1942, so that the suggestion made by counsel for respondent No. 1 offers no explanation. It is clear that all these witnesses have merely tried to favour the case of respondent No. 1 and their evidence relating to the impression created by the leaflet is of no value at all. In the circumstances, the view we have formed above on our own assess- F G H

A ment of the material contained in this leaflet does not require to be revised on the basis of this evidence. The publication of the leaflet, as we have held above, cannot be held to constitute corrupt practice under s. 123(4) of the Act.

The appeal is, consequently, allowed, the decision of the High B Court is set aside and the election petition is dismissed with costs in both Courts.

V.P.S. *Appeal allowed.*