A

IQBAL SINGH

v.

S. GURDAS SINGH & ORS.

September 19, 1975

[A. ALAGIRISWAMI, P. K. GOSWAMI AND N. L. UNTWALIA, JJ.]

B

Representation of the People Act (43 of 1951), *s.* 123(1)—*Corrupt practice of bribery—'Gratification' and 'Bargaining for votes', what amounts to.*

In the election to Parliament from a constituency in Punjab the respondent was declared elected. The appellant filed an election petition alleging, *inter alia*, (i) that at least 15,000 invalid and void votes had been included and counted in favour of the respondent, and (ii) that the Chief Minister of Punjab, who was the brother of the respondent, directed, (a) the distribution to Harijans of large sums of money for construction of Dharamshalas, and (b) the issue of a large number of gun licences, as gratification for inducing voters to vote for the respondent, and that thereby, the corrupt practice of bribery under s. 123(1), Representation of the People Act, 1951, was committed. The High Court dismissed the election petition.

C

Dismissing the appeal to this Court,

HELD: (1) On the evidence, the High Court was right in holding that the appellant had not succeeded in establishing the allegation regarding the 15,000 votes. [889F]

D

(a) Rule 56 of the Conduct of Elections Rules, as amended in 1971, provides that only a ballot paper which did not contain both the mark and the signature of the polling officer would be invalid. Even then it does not automatically become invalid. If the Returning Officer was satisfied that the failure to affix the stamp or signature was due to the fault of the polling officer but the ballot paper was itself genuine he could include it among the valid ballot papers, because, under pressure of work, the polling officer might have failed either to affix the stamp or his signature. [887F-H]

E

(b) The evidence adduced on behalf of the appellant is not consistent as to the ground of invalidity of the ballot papers; as to how the number of 15,000 was arrived at; and as to whether they were counted in favour of the respondent or both the appellant and the respondent. [889E-F]

F

(c) There cannot be any hard and fast rule as to the circumstances when an order of recount would be permissible and it always depends upon the circumstances of the case. On the facts of the present case, there is not the slightest justification for ordering a recount. [889G-H]

(2) In the case of both the allegations regarding Dharamshalas and gun licences, there was no gratification offered and there was no bargaining for votes, and hence there was no corrupt practice. [896B]

G

(a) The word 'gratification' in s. 123(1) should be deemed to refer only to cases where a gift is made of something which gives a material advantage to the recipient. There is a distinction between licences which give a material advantage and those which do not. For example, a licence in a prohibition area to deal in liqueur confers a material advantage on the licensee, whereas a licence enabling a person to imbibe liqueur in such an area gives him no material advantage. It is only the grant of the former that might amount to gratification. Arms licence is a licence for regulatory purposes. Its possession give no material advantage to its possessor. [893C-G]

H

(b) To constitute the corrupt practice of bribery under s. 123(1) there must be a bargain for votes. But a bargain for the purposes of the section does not mean that the candidate or his agent makes an offer and the voter accepts it in the sense that he promises to vote. It is not necessary that the

A voter should say that he would vote and that thereafter only the candidate or his agent should pay the money. It is enough if the candidate or his agent makes the gift or promise *on that condition*. [893G-894A]

(c) In the present case, the State Government had set apart a sum of Rs. 50 lacs for the purpose of construction of Dharamshalas for Harijans. A sum of Rs. 3 lacs was spent towards the end of the financial year, in the district in which this particular parliamentary constituency was situate. Punjab has 11 districts and it cannot, therefore, be said that the amount is disproportionately large. [889H-890A]

B

(d) The anxiety to spend the money towards the end of financial year is also natural. [890A-B]

(e) It may not be setting up a high standard and it may be very desirable that whatever is done for the people should be done by persons in authority throughout the period of their office and not when election time is approaching. But, where a large section of the people get an amenity which they ought, in any case to get, and which they got probably a little more easily because it was election time, it cannot be said that the person in authority making a promise and holding out that he would carry out many remedial measures to benefit the people, was resorting to bribery or bargaining for votes. [890B-D]

C

(f) The issue of the unusually large number of gun licences may be an improper use of power. But, there is no evidence regarding barganing for votes by the promise of gun licences. [890D-G, 893G]

D

(g) *Maganlal Bagdi* v. *Hari Vishnu Kamath*, 13 E.L.R. 205, *Khadar Sheriff* v. *Munnuswami Gounder & Ors.* A.I.R. 1955 S.C. 775, *Ghasi Ram* v. *Dal Singh* [1968] 3 S.C.R. 102, *Radha Krishna Shukla* v. *Tara Chand Maheshwar* 12 E.L.R. 276, *Amirchand* v. *Surendra Lal Dha* E.L.R. 57, *Om Prabha Jain* v. *Abnash Chand & Anr.* [1968] 3 S.C.R. 111, *Bhanu Kumar* v. *Mohan Lal*, [1971] 3 S.C.R. 522, referred to.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1172 of E 1973.

From the Judgment and Order dated the 10th April, 1973 of the Punjab & Haryana High Court at Chandigarh in Election Petition No. 1 of 1971.

Hardayal Hardy, Bishamber Lal and *Mrs. Indira Sahni*, for the F appellant.

H. L. Sibal, Kapil Sibal, P. H. Parekh, Mrs. S. Bhandare, Miss Manju Jaitley and *S. S. Kang*, for respondent No. 1.

The Judgment of the Court was delivered by—

G ALAGIRISWAMI, J. This appeal relates to the election to the Parliament from the Fazilka constituency in Punjab held on 5th March 1971. The Parliamentary constituency consisted of eight assembly constituencies of Malout, Muktsar, Gidderbha, Fazilka, Jalalabad, Abohar, Lambi and Faridkot. The votes were counted on 10th and 11th of March at five different places. The counting of the votes of the Malout Assembly constituency was held on 10th March by Mr. H Aggarwal, Assistant Returning Officer, of Muktsar and Gidderbha on 10th and 11th by Mr Sayal, of Fazilka and Jalalabad on the 10th and 11th by Mr. Mahajan, of Lambi and Abohar on the 10th and 11th

by Mr. Ram Lal and of Faridkot on the 11th by Mr. Garg. 6,409 votes were declared invalid and the 1st respondent was declared elected having secured 1,52,677 votes. The appellant obtained 1,47,354 votes. There were six other candidates about whom it is not necessary to refer.

A number of allegations were made in the election petition about many irregularities that took place on the date of the polling. It is not necessary to refer to them as the issues concerned with them were not pressed even before the High Court. Only two issues, issue 1 and 4 were considered by the High Court and those are the issues urged before us also. They are :

"1. Whether the respondent No. 1 is guilty of corrupt practices specified in paras 19, 20, 22 and 23 and 26 to 29 of the election petition as amended? If so, what is the effect?

4. Whether 15000 ballot-papers were invalid and were wrongly polled and counted? If so, with what effect?"

It is also necessary to refer to issues 3 and 6 for they have some relevance in discussing issues 1 and 4 :

"3. Whether the petitioner is entitled to the scrutiny of the ballot-papers alleged to have been illegally rejected and those of the respondent alleged to have been illegally accepted and on that account is entitled to a recount?

6. Whether the allegations made in para 7 of the petition are correct, and if so, what is the effect?"

As issue 6 was not pressed the various allegations of irregularities at the time of polling including collusion by Polling Officers and consequent false voting and stuffing of ballot boxes could not be considered. As issue 3 was not pressed recount cannot be asked for on the allegation of wrong counting of votes that is that the appellant's votes were wrongly rejected and the 1st respondent's votes were wrongly accepted.

With regard to issue 1 the allegation was that corrupt practice of bribery was committed in the interest of the 1st respondent by his brother Shri Parkash Singh Badal, who was at that time the Chief Minister of Punjab. One of the items of bribery alleged was that large sums of money were distributed to Harijans in the form of contributions towards construction of Dharamshalas for the purpose of inducing them to vote in favour of the 1st respondent. The second allegation was that Shri Parkash Singh Badal directed Mr. Sayal, one of the Assistant Returning Officers, to issue 3,304 gun licences for furthering the prospects of the 1st respondent's election and that this was a gratification for inducing the electors to vote for the 1st respondent. Similarly, Mr. O. P. Garg, another Assistant Returning Officer was alleged to have issued 485 gun licences in the months of February and March, 1971. Shri Parkash Singh Badal was alleged to have arranged and addressed a number of meetings in various

A villages promising to help the voters in many ways if they would vote for his brother. There were certain other allegations of corrupt practices but the only ones canvassed before us were those relating to gun licences and grants in respect of construction of Dharamshalas to Harijans.

The allegations which relate to issue 4, as found in the petition, B were that at least 15,000 invalid and void votes had been included and counted in favour of the returned candidate, which should have been rejected and not counted at all and that in addition at least 3,000 invalid ballot papers which should have been rejected under rule 56 had been wrongly counted as valid votes in favour of the returned candidate. The distinction between 15,000 and 3,000 votes was this: The 15,000 ballot papers were said to consist of (i) spurious ballot C papers (ii) ballot papers not bearing serial number or design authorised for use at the particular polling stations, and (iii) ballot papers not bearing booth marks and the full signatures of the Presiding Officer. The 3,000 ballot papers were said to have been so marked as to render it doubtful to which candidate the vote is given, or the ballot papers bore marks with instrument other than the one supplied for the purpose, or ballot papers marked in favour of more than one candi- D date had been wrongly counted in favour of the returned candidate. No evidence in fact was let in in respect of the 3,000 votes. The attack was concentrated on the 15,000 invalid and void votes. In view of issues 3 and 6 having been given up, the effect of which we have earlier referred to, the only question that arises is whether these 15,000 votes should not have been counted at all, whether for the appellant or for the 1st respondent on the basis that they bore neither E the stamp nor the signature of the Polling Officer.

The whole of the evidence let in was of a uniform type that a number of ballot papers did not bear the signature of the Polling Officer or the stamp of the booth. Indeed the allegation in the petition on this point is "ballot papers not bearing booth marks and full signatures of the Presiding Officer were wrongly counted as valid F votes". It is not said that the the ballot papers bore neither the mark nor the signature of the Presiding Officer. The rule in question, rule No. 56, was amended in 1971 providing that only a ballot paper which did not contain both the mark and signature would be deemed invalid but even then it is not as though it automatically became invalid. The Returning Officer had to scrutinise it in order to see whether the ballot paper was a genuine ballot paper. This provision was appa- G rently put in because under pressure of work the Polling Officer might have failed either to affix the stamp or his signature. If the Returning Officer was satisfied that the failure to affix the stamp or the signature was due to the fault of the Polling Officer but the ballot paper was itself genuine he could include it among the valid ballot papers. Therefore, merely by giving evidence that the ballot papers did not contain both the signature and the stamp it would not be established that the ballot paper concerned was not a valid ballot H paper. But that is the only type of evidence which has been let in.

Apart from this the number 15,000 seems to be a case of wild guess. The appellant's voting agents were alleged to have kept a note

of the number of invalid ballot papers that they had noticed but none was produced. Some of the counting agents gave evidence that they brought it to the notice of the chief counting agent who sat on the dais along with the Assistant Returning Officer at the time of the counting. Neither the counting agents nor the chief counting agent had complained in writing to the Assistant Returning Officer. It is impossible to believe that if there were as many as 15,000 invalid ballot papers, which amount to about two thousand from every assembly constituency they would have kept quiet without raising hell. On both the days of counting an observer deputed by the Election Commissioner had gone round all the places where the votes were counted. No serious infirmities were pointed out to him. One or two ballot papers which did not bear either the signature of the Polling Officer or the stamp were shown to him only in the Lambi constituency and he scrutinised them and found that the serial numbers tallied and he was satisfied about their genuineness. He as well as the various Assistant Returning Officers had offered that if there were any complaints the candidates could ask for a recheck. No such recheck was asked for. It was argued on behalf of the appellant that the recheck offer meant only a check on whether the number of votes had been correctly added. We find it impossible to accept this suggestion. The reference to the checking in the observer's report shows that the checking meant also scrutiny as to whether the ballot paper was signed by the Presiding Officer. The Returning Officer has also mentioned in his order on the application made by the appellant for a recount that he was asked to specify as to whether in any assembly segment he or any of his agents had asked for the recheck or pointed out any discrepancy in the figures and that the appellant had failed to cite any such specific instance, and that he was also asked as to whether he wanted the recounting of any specific assembly segment but he reiterated that he wanted a total recount.

Four of the Assistant Returning Officers, Mr. Sayal, Mr. Ram Lal, Mr. Garg and Mr. Aggarwal have been examined and they did not support the appellant's case that there were such a large number of invalid ballot papers or that it was brought to their notice even orally. Mr. Ram Lal said that at the most there might be 200 such votes which were objected to; that is in respect of the two constituencies in which he was the Assistant Returning Officer. This would mean that there might have been about one thousand invalid ballot papers at the most and we have already mentioned that 6,409 votes had been declared invalid. We do not know how many of them were ballot papers which did not contain either the signature or the stamp.

The way the appellant's case has been developed is also very interesting. We have pointed out that votes of four constituencies were counted on the 10th and of four other constituencies on the 11th. The first move of the appellant was to send a telegram on the 11th. By that time half the number of votes had been counted and probably more than half because we do not know at what time on the 11th the telegram, Ex. B-2 was sent. Even assuming that nearly half the number of votes had been counted the appellant probably had an inkling of the possibility of his being defeated. In this telegram he re-

A ferred to about fifteen thousand ballot papers which did not contain either the signature of the Presiding Officer or the Polling Officer of the polling station and booth numbers. He also mentioned that about six thousand three hundred votes had been wrongly rejected. Apparently he wanted to imply that they would otherwise have gone in his favour. But his case of six thousand votes which ought to have gone to him, but had been wrongly rejected, had been completely given up B later. Another telegram sent on the 13th March 1971 was similar to the telegram sent on the 11th. A similar telegram was sent by the appellant to the General Secretary of the Congress Party as also the Prime Minister. But in the petition given to the Returning Officer asking for a recount on the same day the complaint was that some of the ballot papers did not bear the official stamp on their back as provided by rules and they seem to have been smuggled illegally and C the number given in "thousands". Another complaint was that some of the ballot papers did not bear the signatures of the Presiding Officer on the back, which were also "in thousands" and even more than five thousand. So here we do not find the allegation that the ballot papers contained neither the signature nor the stamp. In his petition before the Election Commission asking for recount he mentioned fifteen D thousand ballot papers as having been found which bore no distinction mark or signature of the Presiding Officer. He also mentioned the rejection of more than 6,000 votes. As we have already pointed out, there is absolutely nothing on record to show how the figure 15,000 was arrived at. We are, therefore, satisfied that the mention about 15,000 votes, 3,000 votes and 6,000 votes are only steps in the attempt to secure a recount at any cost and to fish for evidence. As E we have already pointed out, the allegation in the petition was that 15,000 invalid votes were counted in favour of the returned candidate but in the evidence as well as the arguments it was only claimed that there were 15,000 invalid ballot papers which were counted. There is nothing to show how many of those 15,000 went to the appellant and how many to the 1st respondent. Indeed as we have earlier explained what was asked for was elimination of the 15,000 votes altogether from the counting. The whole thing is mere kite flying. We are, F therefore, in agreement with the learned Judge of the High Court that the appellant has not succeeded in establishing the allegations covered by issue No. 4.

There are a large number of decisions of this Court on the question regarding the circumstances under which a recount can be ordered. It has been recognised in all those decisions that there can never be G any hard and fast rule as to the circumstances when an order of recount would be permissible and should always be dependent upon the circumstances of the case. We do not therefore consider it necessary to refer to any of those decisions. Suffice it to say that the facts of this case do not leave even the slighest justification for ordering a recount.

Now we come to the question corrupt practice. We shall first H of all deal with the grant for construction of Dharamshalas for Harijans. The Punjab Government appears to have set apart a sum of Rs. 50,00,000 for this very purpose. All that is established is that a sum of Rs. 3,00,000 was spent towards the end of the official

financial year 1970-71 in the district in which this Fazilka Parliamentary Consituency is situate. Punjab has 11 districts and it cannot therefore be said that this sum is disproportionately large. The anxiety to spend the money towards the end of the financial year is also natural. If the end of the financial year also happens to be the period when an election is going on parties in power naturally bestir themselves to show that they are active in helping the people to get what they want. The election time is the time when people in power as well as ordinary politicians are active in trying to show that they are out to help the people. They address meetings and hold out all sorts of promises. Where a large section of the people are concerned, who only get an amenity which they ought in any case to get and which they get probably a little more easily because it happens to be election time, it cannot be said that the person in authority making that promise and holding out that he would carry out many remedial measures to benefit the people was resorting to bribery or bargaining for votes. It may not amount to setting up a very high standard and it may be very desirable that whatever is done for the people should be done by persons in authority throughout the period of their office. But they naturally are more active at election time than other times. That cannot be said to amount to corruption.

We then come to the question of gun licences. It has been pointed out that during the months of January, February and March 1971 Mr. Sayal had issued 3,304 gun licences and Mr. Garg 485 gun licences, the usual number in an ordinary year being about 300. When every explanation offered on behalf of the officials is taken into consideration, the fact remains that an unusually large number of gun licences had been issued during that period. We are satisfied that to some extent at least this amounts to improper use of power. We do not say that this is an abuse or misuse. In fact there is evidence that the proper procedure has been followed in these cases. In one case, for instance, a man who had applied for a gun licence long time back approached the Chief Minister when he had come to the village and he at once told the District Magistrate and the man got his licence. We can see nothing improper in that instance. But the gun licences themselves are issued by the officials and not by the Chief Minister. It also appears that a large number of relatives of the Chief Minister as well as his Mukhtiar-e-Aam, his maternal uncle, and even the returned candidate had taken interest in the issue of gun licences. It was sought to be proved that the Chief Minister had addressed a number of meetings promising to issue gun licences if they would vote for his brother. But there was no allegation in the election petition relating to the meetings he addressed or his having held out the promise in those meetings that he would issue gun licences if the people voted for his brother. The 1st respondent himself not having had notice of the specific allegation of meetings at which such promises were held out we have left out of consideration the evidence regarding the meetings and the promises held out by the Chief Minister in those meetings as inadmissible.

Assuming that it was the returned candidate or his agent that had held out an inducement to get gun licences issued for people who vote

A for the returned candidate, does it amount to bribery under s. 123(1) of the Representation of the People Act? Bribery is defined thus:

"123(1) 'Bribery', that is to say,—

(A) any gift, offer or promise by a candidate or his agent or by any other person with the consent of a candidate or his election agent of any gratification, to any person whomsoever, with the object, directly or indirectly of inducing—

(a) .....

(b) an elector to vote or refrain from voting at an election, or as a reward to—

(i) .....

(ii) an elector for having voted or refrained from voting;

(B) the receipt of, or agreement to receive, any gratification, whether as a motive or a reward—

(a) .....

(b) by any person whomsoever for himself or any other person for voting or refraining from voting, or inducing or attempting to induce any elector to vote or refrain from voting, or any candidate to withdraw or not to withdraw his candidature.

Explanation.—For the purposes of this clause the term gratification' is not restricted to pecuniary gratifications or gratifications estimable in money and it includes all forms of entertainment and all forms of employment for reward but it does not include the payment of any expenses *bona fide* incurred at, or for the purpose of any election and duly entered in the account of election expenses referred to in section 78."

In order to understand the exact implication of the word 'gratification' it may be useful to refer to another statute which has been in force for over a century, that is, the Indian Penal Code as most legislations tend to folow established precedents. In section 161 of the Code, which deals with bribery, one of the explanations is as follows:

"Gratification." The word "gratification" is not restricted to pecuniary gratification, or to gratification estimable in money."

Illustration (a) to the section is as follows:

"(a) A, a munsif, obtains from Z, a banker, a situation in Z's bank for A's brother, as a reward to A for deciding a cause in favour of Z. A has committed the offence defined in this section."

We may also quote s. 171-B of the Code and s. 171-E which find a place in the Chapter of Offences Relating to Elections, which was inserted in the Code in the year 1920:

"171-B. (1) whoever—

(i) gives a gratification to any person with the object of inducing him or any other person to exercise any electoral right or of rewarding any person for having exercised any such right; or

(ii) accepts either for himself or for any other person any gratification as a reward to exercising any such right or for inducing or attempting to induce any other person to exercise any such right,

commits the offence of bribery :

Provided that a declaration of public policy or a promise of public action shall not be an offence under this section.

(2) A person who offers, or agrees to give, or offers, or attempts to procure, a gratification shall be deemed to give a gratification.

(3) A person who obtains or agrees to accept or attempts to obtain a gratification shall be deemed to accept a gratification, and a person who accepts a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done, shall be deemed to have accepted the gratification as a reward."

"171-E. Whoever commits the offence of bribery shall be punished with imprisonment of either description for a term which may extend to one year or with fine, or with both.

Provided that bribery by treating shall be punished with fine only.

Explanation.—"Treating" means that form of bribery where the gratification consists in food, drink, entertainment, or provision."

It would be noticed that the Explanation to section 123(1) of the Representation of the People Act and the Explanation to section 161 of the Indian Penal Code relating to gratification are similar. In addition, the Representation of the People Act refers to all forms of entertainment and all forms of employment for reward. The employment for reward is covered by illustration (a) to s. 161 of the Indian Penal Code. The words "all forms of entertainment" in the Explanation to section 123(1) of the Representation of the People Act apparently refer to offence of treating found in s. 171-E of the Indian Penal Code. When Parliament enacted the provision regarding bribery in the Representation of the People Act it should have had before it the comparable provisions in the Penal Code. It is to be noticed that the giving of any gratification with the object of inducing the receiver or any other person to vote is an offence while acceptance of gratification by a person either for himself or for any other person or for inducing any other person to vote is an offence. In other words giving is an offence if paid to the voter or such giving induces another person to vote. It is not giving a gratification in order that he may induce another person to vote that is an offence whereas

A receipt of a gratification in order to induce another person to vote is an offence. The reason for the distinction between the provision in s. 123(1)(A) and 123(1)(B) seems to be this : In the former case a person standing for election has necessarily to have a number of people to work for him and he may have to bear their expenses. That by itself should not be deemed to be bribery. In the latter case when a person takes money offering to induce other people, of course, induce B by wrong means, to vote for the person who pays him the money he is really poking his nose into something which is no business of his and that practice should be discouraged. See *Kalya Singh's case*(1) and our judgment in *Harisingh Pratapsingh Chawda* v. *Popatlal Mulshanker Joshi & Ors.*(2) So far as we are aware it has never been held that the issue of a gun licence amounts to bribery under s. 171-B. We are of opinion that the word 'gratification' should be deemed to refer only C to cases where a gift is made of something which gives a material advantage to the recipient. There is hardly any need to say that giving of anything whose value is estimable in money is bribery. A gun licence gives no material advantage to its recipient. It might gratify his sense of importance if he has a gun licence in a village where nobody else has a gun licence. So might the conferment of an honour like Padma Bhushan. A praise from a high quarter might D gratify the sense of vanity of a person. But the word 'gratification' as used in s. 123(1) does not refer to such gratifications any more than in s. 171-B of the Indian Penal Code. Taking the case of licences : Possibly the grant of a licence which enables a man to do some business and thus make money may confer a material advantage to him. We are not here speaking of licences which are insisted upon merely for regulatory purposes like municipal licences. But a licence E given to a person to deal in fertilizers might confer a financial advantage to that person; so might an import licence or an export licence. Such licences differ from licences for regulatory purposes. Arms licence is a licence for regulatory purposes. Its possession gives no material advantage to its possessor. A licence in a prohibition area to deal in liqueur might confer a material advantage to the licensee. But a licence enabling a person to imbibe liqueur in such F area gives the licensee no material advantage. Such a licence is only regulatory. We must therefore distinguish between various kinds of licences and hold that where a licence gives a material advantage to the licensee the grant of such licences amounts to a gratification. In that sense the grant of gun licences to voters in the Fazilka Constituency would not amount to bribery. We have discussed this question on the basis that the authority to grant a licence is the returned candi- G date or his brother the Chief Minister.

We have already pointed out that there is no evidence regarding bargaining for votes by promise of gun licences. A bargain for the purposes of this section does not mean that the candidate or his agent makes an offer and the voter accepts it in the sense that he promises to vote. It is enough if the candidate or his agent makes the gift or H promise on that condition. If a candidate or his agent pays money to a voter saying that he wants him to vote it is a bargain for the pur-

(1) [1975] 3 S. C. R. 783. (2) C. A. 90 of 1973 decided on 19-9-1975.

poses of this section. It is not necessary that the voter should say that he would vote and thereafter the candidate or his agent should pay the money. Even in such a case the voter after receiving the money might or might not vote.

The law regarding bribery in elections in our country has been discussed in various decisions of this Court. In *Magantal Bagdi* v. *Hari Vishnu Kamath*(1) the candidate offered to construct a well in a village if the voters voted for him and not for the rival candidate and money was actually deposited for this purpose and was to await the result of the election. It was held that there was a clear bargain for votes. In *Khader Sheriff* v. *Munnuswami Gounder & Ors.*(2) it was observed by this Court that it may be meritorious to make a donation for a charitable purpose but on the eve of an election such a gift may be open to construction that it was made with the intention of buying votes. In *Ghasi Ram* v. *Dal Singh*(3) it was held that the gift must be proved to have a direct or indirect connection with votes and this must admit of no other reasonable excuse. In *Radha Krishna Shukla* v. *Tara Chand Maheshwar*(4) general promises by Ministers to redress certain public grievances or to erect certain public amenities like hospitals, if elected, were held not to amount to corrupt practice. They were treated as promises of general public action. In *Amirchand* v. *Surendra Lal Jha*(5) it was laid down that if a Minister redresses the grievances of a class of the public or people of a locality or renders them any help, on the eve of an election, it was not corrupt practice unless he had obtained promises from the voters in return, as a condition for their help. The promise to grant gun licences would really amount to a redressal of the grievances of a class of the public or rendering them any help. There is no evidence here of obtaining a promise from the voters in return. The observations made in *Ghasi Ram's* case (supra) regarding the action taken by a Minister which helps a class of the public may be noticed in this connection :

> "The position of a Minister is difficult. It is obvious that he cannot cease to function when his election is due. He must of necessity attend to the grievances, otherwise he must fail. He must improve the image of his administration before the public. If everyone of his official acts done *bona fide* is to be construed against him and an ulterior motive is spelled out of them, the administration must necessarily come to a standstill. The State of Haryana came into existence on November 1, 1966. With an election in the near future, the political party had to do acts of a public nature. The grant of discretionary grants were part of the general scheme to better community development projects and to remove the immediate grievances of the public. The money was required to be spent in about 3 months' time. The action of the Minister had often the concurrence and recommendation of his subordinate staff. It is for this reason

(1) 15 E. L. R. 205.
(2) A. I.R. 1955 S. C. 775.
(3) [1968] 3 S. C. R. 102.
(4) 12 E. L. R. 376.
(5) 10 E. L. R. 57.

A

that the orders about the improvement of the supply of waters were not pressed. They were incapable of being construed against the first respondent. Therefore, emphasis was placed upon the distribution of money. The money was not distributed among the voters directly but was given B to Panchayats and the public at large. It was to be used for the good of those for and those against the candidate. No doubt they had the effect of pushing forward his claims but that was inevitable even if no money was spent, but good administration changed the people's condition. We cannot, therefore, hold that there was any corrupt practice. C If there was good evidence that the Minister bargained directly or indirectly for votes the result might have been different but there was no such evidence."

The issue for decision in *Om Prabha Jain* v. *Abnash Chand & Anr.*(1) was similar to the case here in respect of the grants for Dharamshalas D for Harijans. It was held that the action of the Minister could not be construed against her and that it was done in the ordinary course of her duties as Minister and there was no evidence that it was, directly or indirectly, part of a bargain with the voters. In *Bhanu Kumar* v. *Mohan Lal*(2) it was alleged that the Chief Minister by ordering the covering of a nallah, the construction of a road, the installation of E water taps and the grant of pattas to the inhabitants of a colony for construction of houses had made a bargain with the people for votes and thus committed corrupt practice as defined in s. 123(1) of the Representation of the People Act. This Court pointed out that ordinarily amelioration of grievances of the public is innocuous and cannot be construed against a candidate who is a Minister but that if F there is evidence to indicate that any candidate at the election abused his power and position as a Minister in the Government by utilising public revenues for conferring advantage or benefit on a particular group of people for the purpose of obtaining their votes, different considerations will arise and it may be held to be a corrupt practice G within the meaning of s. 123(1). In that case it was held that in all the instances relied upon by the appellant the evidence showed that there were long standing public grievances and the Government had from time to time made suggestions and recommendations for redress of the grievances and amelioration of the condition of the people and that it could not be said that on the eve of election there was any H sudden or spontaneous outburst of public activity in the shape of

(1) [1968] 3 S.C.R. 111. (2) [1971] 3 S.C.R. 522.

diverting money to win electors to the side of the Chief Minister by throwing baits or giving them any particular and specially favoured treatment. These observations apply to the case of grants for Harijan dharamshalas. A

We are therefore saisfied that the case of both the allegations of corrupt practice there was no gratification offered, that there was no bargaining for votes in the sense we have explained earlier and these issues must also be found against the appellant. B

The appeal is, therefore, dismissed with costs.

V.P.S. *Appeal dismissed.*