C. NARAYANASWAMY

v.

C.K. JAFFAR SHARIEF AND ORS.

AND

SMT. PRAMILA NESARGI

v.

C.K. JAFFER SHARIEF AND ORS.

AUGUST 9, 1994

[KULDIP SINGH, P.B. SAWANT AND N.P. SINGH. JJ.]

Election laws— Representation of the People Act, 1951,—Section 123(I)(A)(b)—Corrupt practices—Mass feeding of electors during election—Whether a corrupt practice.

Election laws—Bribery, gift, offer or promise of gratification and inducement to vote—Negotiation between Candidate or agent and electors—Need not be proved—Inducement to voters may be indirect.

Representation of the People Act, Sec. 83(1)(a)(b)—Requirements of—Pleadings—Statement of material facts and setting forth of full particulars of any corrupt practice—Needs to be complied with—Mere reproduction of section does not amount to statement of material facts.

Representation of the People Act—Section 83(1)(a)(b)—Corrupt practices—Proof of incurring of expenditure beyond prescribed limit by elected candidates—Burden of—Conduct of "Election Rules, 1961—Rule 90.

Election Laws—Right to elect or to be elected—Statutory right, not fundamental or Common law right—Right to challenge election—Similarly, flows from statute.

Representation of the People Act—Ss. 77(1)—Effect of Explanation I as introduced by Act 58 of 1974 and 123(6)—Corrupt practice—Expenditure—By political party or association or other person—Not deemed expenditure incurred or authorised by candidate.

Representation of the People Act—S.100(1)(d)(iii)—Declaring election void—Grounds of—Conduct of election—Election Rules—Rules 45 and 56

A *(7)—Form 16—Improper numbering of ballot papers—Effect of.*

Shri C.K. Jaffer Sharief was elected to the Lok Sabha from Banglore North Lok Sabha Constituency. His election was challenged by the appellant on the grounds of corrupt practice of mass scale free feeding of the electors, excessive expenditure and printing of spurious ballots papers.
B **The respondent's position was (i) the free feeding was on account of the obsequies observed for the assassinated former Prime Minister, Shri Rajiv Gandhi; (ii) the respondent had only incurred the reported expenditure and the rest was incurred by the party and; (iii) the ballots were not spurious.**

C **Dismissing the appeals, this Court**

HELD : 1. After the process of election had commenced and before the electors had exercised their right of franchise. mass feeding of electors arranged by the candidate or on his behalf in order to induce directly or
D **indirectly the electors to vote, was a corrupt practice. With the existing economic conditions prevailing in the country feeding of electors may induce them to vote in favour of the candidate arranging it. [468-G-H, 469-A]**

Mohan Singh **v.** *Bhanwarlal*, **AIR (1964) SC 1366 and** *Rajendra Prasad Jain* **v.** *Sheel Bhadra Yajee,* **AIR (1967) SC 1445, relied on.**

E

2. The negotiation between the candidate or by any person on his behalf on the one hand and the electors on the other need not be proved. Section 123(1)(A)of the Representation of people Act did not require the electors to express or convey their acceptance or assurance that they could
F **vote for the candidate. But a nexus between the gift, offer or promise of gratification and the inducement to vote had to be established, which could be done even by circumstantial evidence. [469-C-F]**

S.B. Adityan **v.** *S. Kandaswami*, **AIR (1958) SC 857 and** *B. Rajagopala Rao* **v.** *Appayya Dora Hanumanthu & Ors.*, **AIR (1990) SC 1889, relied on.**

G

Laxmi Narayan Nayak **v.** *Ramrathan Chaturvedi*, **[1990] 2 SCC 173; referred to.**

Ghasi Ram **v.** *Dal Singh*, **[1968] 3 SCR 102 = AIR (1968) SC 1191,** *Bhanu Kumar Shastri* **v.** *Mohan Lal Sukhadia*, **[1971] 3 SCR 522 = AIR**
H **(1971) SC 2025 and** *Harjit Singh Mann* **v.** *S. Umrao Singh*, **[1980] 2 SCR**

3. Charge of corrupt practice had to be proved by the election petitioner. The proceedings in the election petition were quasi-criminal in nature. A

Devi Prasad v. *Malluram Singhania*, [1969] 3 SCC 595; *Rahim Khan* v. *Khurshid Ahmed*, AIR (1975) SC 290; *Bir Chandra Barman* v. *Anil Sarkar*, AIR (1976) SC 603; *Laxmi Raman* v. *Chandan Singh*, AIR (1977) SC 587 and *Amolakchand* v. *Bhagwandas*, AIR (1977) SC 813, relied on B

4. The elected candidate could not meet the allegations in the vague pleadings. Requirements of section 83(1)(a)b) regarding statement of material facts and setting forth of full particulars of any corrupt practice had to be complied with in the election petition. [475-E-F, H] C

Samant N. Balkrishna v. *George Fernandez*, [1969] 3 SCR 603; *Udhav Singh* v. *Madhav Rao Scindia*, [1976] 2 SCR 246; *Daulat Ram Chauhan* v. *Anand Sharma*, [1984] 2 SCR 782; *Dhartipakar Madan Lal Agarwal* v. *Rajiv Gandhi*, [1987] 3 SCR 369 and *Sapa* v. *Singora*, [1991] 2 SCR 752, relied on. D

5.1. The requirement of keeping separate and correct account of all expenditure in connection with the election incurred or authorised by the candidate or on his on his behalf had been diluted by Explanation 1 which provided that if the expenditure had been incurred by a political party/any other association/body of persons/any individual other than the candidate or his election agent, it would not be deemed to be expenditure in connection with the election incurred or authorised by the candidate. [482-H, 483-A] E

5.2.Explanation I encourage corruption by underhand methods. Candidate should not be allowed to plead ignorance about the persons who had made contributions and investment for his success. But this had to be taken care of by the Parliament. [482-C-D] F

Kanwar Lal Gupta v. *Amar Nath Chawla*, [1975] 3 SCC 646 and *P. Nalla Thampy Terah* v. *Union of India*, [1985] Supp. SCC 189, referred to.

6. In Bangalore there being no facility of printing ballot papers in seven digits 'A' was added as a prefix to the ballot papers printed beyond 10 lakhs. Merely because in Form 16 instead of 'A' 'I' had been mentioned as prefix for those ballot papers it could not be said that the ballot papers beyond the number 999999 were spurious and duplicate and were used by the respondent in a surreptitious manner thereby materially affecting the G H

A **result of the election. [485-E-F]**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7194 of 1993.

From the Judgment and Order dated 19.4.93 of the Karnataka High
B Court in E.P. No. 2 of 1991.

With

Civil Appeal No. 2543/93.

C Prashant Bhushan and Mohan Rao for the Appellant in C.A. No. 7194/93

In-person for the Appellant in C.A. No. 2543/93.

Kapil Sibal, D.N. Nanjunda Reddy, Ms. Vimla Sinha and Gopal
D Singh for the Respondent in No. 1.

Prashant Bhushan and C. Mohan Rao for the Respondent in No. 2.

R.C. Mishra and Dr. Meera Aggarwal for the Respondent in No. 3.

E Shankar Divate and Ms. Lalita Kaushik for the Respondent Nos. 15 and 19.

The Judgment of the Court was delivered by

N.P. SINGH, J. These appeals have been filed against the judgment
F of the High Court dismissing , two election petitions filed on behalf of the appellants, questioning the validity of the election of respondent C.K. Jaffar Sharief (hereinafter referred to as "the respondent") to the Lok Sabha from Bangalore North Lok Sabha Constituency.

The appellants challenged the election of the respondent, primarily
G on the grounds (i) that the respondent arranged large scale mass free feedings for the electors during the election, which amounted to a corrupt practice within the meaning of Section 123(1)(A) of the Representation of the People Act, 1951 (hereinafter referred to as "the Act") (ii) that the said respondent incurred expenditure at the said election in contravention of
H Section 77 of the Act which amounted to a corrupt practice within the

meaning of Section 123(6) of the Act; and (iii) that the declaration of the result of the respondent was in violation of the provisions of the Act inasmuch as several thousand votes which should not have been counted in his favour and ought to have been rejected as invalid, were counted in favour of the respondent, which has materially affected the result of the election of the respondent and as such his election is liable to be declared void under Section 100(1)(d)(iii) & (iv) of the Act. The relevant part of Section 123(1) is as follows :

> "*Corupt practices* – The following shall be deemed to be corrupt practices for the purposes of this Act:
>
> (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.....
>
> .....
>
> *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"
>
> (emphasis supplied)

In view of Section 123(1)(A)(b), 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, with the object of "directly or indirectly" inducing a voter to vote, shall be deemed to be "bribery" and as such shall amount to a corrupt practice. Mass feeding of the electors after the process of election has commenced and before the date of poll may induce directly

A or indirectly the electors to vote in favour of the candidate who has arranged such feast for them in course of the election. In the case of *Mohan Singh* v. *Bhanwarlal*, A.I.R. (1964) SC 1366 a Constitution Bench of this Court, while commenting on the expression "gratification" in Section 123(1)(A), held that :

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> "....."Gratification" in its ordinary Connotation means satisfaction. In the context in which the expression is used, and its delimitation by the Explanation, it must mean something valuable which is calculated to satisfy a person's aim, object or desire, whether or not that thing is estimable in terms of money;....."

C

It was further stated that Explanation to sub-section (1) of section 123 of the Act extends the expression "gratification" to include all forms of entertainment.

D In the case of *Rajendra Prasad Jain* v. *Sheel Bhadra Yajee & Ors.*, A.I.R. (1967) SC 1445, this Court said :

> "..... In our opinion, when considering the scope of the words "offer of bribery" in the Election Law, we should not place a narrow construction on that expression. In fact, the scope of that expres-
E sion should be extended in order to ensure that elections are held in an atmosphere of absolute purity, and a wide meaning should be given to the expression "offer of bribery"."

The Explanation to Sub-Section (1) of Section 123 says specifically that the
F term "gratification" includes all forms of entertainment. Even Explanation to Section 171-E of the Indian Penal Code says that "treating" means that form of bribery where the gratification consists of food, drink, entertainment or provision.

In view of the Explanation to Section 123(1) of the Act, there should
G be no difficulty in holding that after the process of election has commenced and before the electors have exercised their right of franchise, mass feeding of electors arranged by the candidate or his agent or any other person with the consent of the candidate or his election agent in order to induce directly or indirectly the electors to vote, shall be a corrupt practice within
H the meaning of the said section. Particularly with the existing economic

conditions prevailing in the country feeding of electors may induce them to vote in favour of the candidate arranging it. As such if the Court is satisfied that the mass feeding had been arranged in order to directly or indirectly induce the electors to vote for the candidate in question, the charge of 'bribery' shall be deemed to have been established.

The next aspect which needs examination is as to whether before arranging any such mass feeding, or in course thereof, the factum of any negotiation between the electors on one side, and candidate or his agent or any person arranging such mass feeding on behalf and with the consent of the candidate or his election agent on the other side has to be proved. The framers of the Act while specifying as to what shall be deemed to be "bribery", did not provide that the negotiation between the candidate or his agent or any other person with the consent of such candidate or his election agent on the one hand and the elector on the other should be proved Section 123(1)(A) says that any gift, offer or promise by a candidate or his agent or any other person with the consent of such candidate or his election agent, of any gratification made to the elector "with the object, directly or indirectly of inducing" such an elector to vote, shall be deemed to be 'bribery'. Section 123(1)(A) does not require the electors to express or convey their acceptance or assurance that they shall vote for such candidate. On the material on record, of course the court has to be satisfied that such gift, offer or promise of any gratification has been made to the electors with the object directly or indirectly to induce the electors to vote in favour of such candidate. A nexus between the gift, offer or promise of gratification and the inducement to vote has to be established. This can be established even by circumstantial evidence. The Election Petitioner is not required to prove any direct negotiation between the candidate or his agent on the one hand and the electors on the other.

In the case of *S.B. Adityan* v. *S. Kandaswami & Ors.*, A.I.R (1958) SC 857, it was said :

> ".....The words "gift, offer or promise by a candidate or his agent or by any other person, of any gratification" clearly shows that what is contemplated is the making of a gift. These words are wholly inappropriate to describe the acceptance of a gift. The words "with the object, directly or indirectly, of inducing" also indicate that only the making of a gift is contemplated, for the object is of the person

A making the gift, and clearly not of the person accepting it....."

A Three Judges Bench in the case of *B. Rajgopala Rao & Anr.* v. *Appayya Dora Hanumanthu & Ors.*, A.I.R. (1990) SC 1889, said :

B "It was urged by Mr. Rao, learned counsel for the appellants that in the impugned judgments, the High court has incorrectly taken the view that in order to amount to bribery within the meaning of the said term in S. 123(1)(A), the transaction must amount to a bargain by the candidate with a view to get votes. It was pointed out by him that the said view has been taken in the C impugned judgments, relying upon the decision of a Bench comprising two learned judges of this Court in *Ghasi Ram* v. *Dal Singh*, [1968] 3 SCR 102 at pp 109- 110 : AIR (1968) SC 1191 at p. 1196. We have gone through the relevant portion of that judgment (at pages 109 and 110 (of SCR) : at p.1196 of AIR of the said report). D A careful persusal of the said judgment shows that what has been really held in that case is that if the promises given or made amount to a bargain entered into by a candidate for a vote or votes, that would amount to a corrupt practice, but it has not been held there that unless the act alleged amounts to such a bargain, it could not amount to a corrupt practice. In our view, that judgment does not E lay down that in order to amount to a corrupt practice, the transaction must amount to a bargain for getting a vote. It was pointed out by Mr. Rao, however, that such a view seems to have been taken into other decisions rendered by two Benches, each comprising two learned Judges of this Court in *Bhanu Kumar* F *Shastri* v. *Mohan Lal Sukhadia*, [1971] 3 SCR 522 at p. 543 = AIR (1971) SC 2025 at p. 2038 and *Harjit Singh Mann* v. *S. Umrao Singh*, [1980] 2 SCR 501 at p. 510 = AIR (1980) SC 701 at p. 706 and these judgments need to be overruled. We do not propose to go into the correctness or otherwise of this view because, even on the footing that in order to amount to a corrupt practice under the G aforesaid provision the alleged acts need not constitute a bargain, the acts established in the present case, in our opinion , do not amount to a corrupt practice."

Mr. Prashant Bhushan, learned counsel appearing for one of the H appellants rightly pointed out that in the case of *Laxmi Narayan Nayak* v.

Ramratan Chaturvedi & Ors., [1990] 2 S.C.C. 173, the attention of the two learned Judges of this Court, was not drawn to the case, referred to above and because of that an observation was made, viz. "element of 'bargaining' is completely absent in the present case". If an election petitioner is required to prove that the gift, offer or promise of gratification was accepted by the electors by assuring to vote in favour of such a candidate, the provisions of Section 123(1)(A)(b) shall become redundant and shall have to be read as a pious wish of the framers of the Act to eliminate the role of 'bribery' in the elections. The framers of the Act were quite conscious that in many cases it will be difficult to get direct evidence of inducement to the electors to vote, and because of that they have provided that inducement to voter may be indirect as well. This is so even where before poll, cash, clothes, cycles, blankets etc., are distributed amongst the electors by the candidate or his agent. Once the Court comes to the conclusion that such gifts were made to induce the electors to vote in favour of the candidate concerned, a corrupt practice within the meaning of Section 123(1)(A) shall be deemed to have been committed.

A B C D

But before the charge of bribery, as contemplated in Section 123(1)(A) of the Act, is held to have been proved, against the candidate concerned, because of mass feeding arranged by him or his agent or any other person with his concept or the consent of this election agent, it must be established that the object of such mass feeding was directly or indirectly to induce the electors to vote in favour of such candidate. In some cases, on material being produced, this charge can be established directly if the candidate or his agent or any other person with the consent of the candidate or his election agent, at such mass feeding of the electors, seeks their support and votes at the election in question. But there may be cases, where the inducement to vote is not direct but only indirect one. The candidate or his agent or any other person who has arranged such mass feedings with the consent of the candidate or his election agent, may not make a direct appeal to the electors either before during or after the feast.

E F G

In the present case, it has been alleged in the election petition, filed on behalf of the appellant in Civil Appeal No. 7194 of 1993, that the election for the said parliamentary constituency, was to be held on 26.5.1991, but it was adjourned by three weeks by the Election Commissioner, because of the assassination of Rajiv Gandhi. It was ultimately held

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A on 15.6.1991. During the interval between 26.5.1991 and 15.6.1991 under the guise of observing obsequies of the assassinated former Prime Minister, large scale free mass feedings of the electorate in the slum areas in the city and the poor localities in the villages were arranged by the respondent, his election agent and other persons with his consent with a view to induce the
B electors to vote in favour of the respondent. Thousands of voters of the constituency participated in such mass feedings. On behalf of the appellant, reliance was placed on an advertisement published on 8.6.1991 in paper SANJFVANI (Ext. p. 10) which is as follows :

"ANNADANA

C

PHOTOGRAPHS OF :

SHRI RAJIV GANDHI C.K. JAFFER SHARIEF

SMT. INDIRA GANDHI K.J. GEORGE

D

In memory of Rajiv who died for the country under the auspecies of Bharati Nagar constituency, Indira Congress Mass Feeding is organised tomorrow Sunday (9.6.91)

President : Shri K.J. George

E

Annadana distributed by : Shri C.K. Jaffar Sharief.

Maruthi Sevanagar : Morning 11.30, Cox Town : 12 Noon, Bharati Nagar : After Noon 12.30 , Nehru Puram : AfterNoon 1 o'Clock. Shavanna Chetty Garden : After Noon 1.30, Ulsoor : 2, Murphy Town : After Noon
F 2.30.

Published By : Bharati Nagar Block Youth Congres (I) Committee.

Bharati Nagar Block Youth Congress (I) Committee.

G All are requested to participate in these programmes."

It was urged that although in the advertisement, it was mentioned that mass feeding had been organised on 9.6.1991 at different places mentioned in the said advertisement, in the memory of Shri Rajiv Gandhi, who died for the country the real object behind such mass feeding was to influence and
H to induce the electors to vote in favour of the respondent.

Election petitioner examined himself as PW 1. He stated that 'Annadana' was arranged in the entire constituency on several days under the leadership of the respondent in connection with 'Punya Thithi' of Shri Rajiv Gandhi. This 'Annadana' was held by making publication in newspapers and in some cases even without such publication. The 'Annadana' used to be organised like a public function and food used to be served. The respondent himself used to offer food to the persons who came as guests. According to PW 1 such mass feedings were organised to get votes from poor people. He also claimed to have seen the mass feedings at Cox Town, Maruthi Seva Nagar, Murphy Town and other places, details whereof have been stated by him in his evidence. Similarly, PW 2 also stated that election compaign had been carried on in several ways, including 'mass feeding' in connection with the obsequies of Shri Rajiv Gandhi. He also stated that through advertisement and other media announcements were made about 'Annadana' to be held on 9.6.1991 at different places. According to him, in the mass feeding at Maruthisevanagar on 9.6.1991, 800 persons were fed. PW5 also stated that 'Annadana' took place in Vijayapura Town in the Town Hall on 31.5.1991 and hand bills had been printed in that connection. He also stated that such mass feeding took place after the assassination of Shri Rajiv Gandhi, in Harijan and Muslim colonies. According to him, 'Annadana' was performed to secure votes. PW 8 stated that on 31.5.1991 food was distributed in the Town Hall after wide publicity, ostensibly in connection with the obsequial ceremony of late Shri Rajiv Gandhi. People of Vijayapura town and surrounding villages participated at such mass feeding. Similarly PW 14 stated in his evidence that on the ostensible reason of holding of obsequial ceremony of Shri Rajiv Gandhi there was distribution of food in some slum areas. In respect of such 'Annadana' announcement had been made in the different segments of the constituency. Several leaders were present including the respondent at such distribution of food to poor people. PW 15 also supported the said allegation. But at the same time, he also stated that the mass feedings were held in connection with the obsequial ceremony of late Shri Rajiv Gandhi, in which he saw the respondent distributing the food. PW 18, the other witness, examined on behalf of the appellant, also stated about the advertisement in the newspaper Sanjevani on 8.6.1991 about 'Annadana' to be held on 9.6.1991. PW 18 was examined to prove the advertisement aforesaid (Ext.P.10) in the Sanjevani Newspaper. PW 22 also

A stated about the mass feeding at Gymkhana ground. He stated that 500 to 600 persons were present to whom food was served by the respondent. He also stated that there was a poster of Shri Rajiv Gandhi at that place.

It appears to be an admitted position that the mass feeding, which
B was described as 'Annadana' in the advertisement referred to above had been arranged only after the postponement of the election, due to the assassination of Shri Rajiv Gandhi from 26.5.1991 to 15.6.1991. No mass feeding had been held prior to 26.5.1991. In the advertisement, which was published in the Sanjevani on 8.6.1991, it was specifically stated that mass feeding was being organised at different places on 9.6.1991 "in memory of
C Rajiv who died for the country" . The mass feeding was described as "Indira Congress Mass Feeding". In the advertisement, it was mentioned that it was being published by Bharati Nagar Block Congress (I) Committee and Bharati Nagar Block Youth Congress (I) Committee.

D According to the appellant, the ostenisble object was to observe the obsequies of Shri Rajiv Gandhi, but the real object was to arrange feasts for electors, to induce them to vote in favour of the respondent. It is well settled that charge of corrupt practice has to be proved by the election petitioner and the proceedings in the Election Petition are quasi criminal
E in nature. Reference in this connection may be made to *Devi Prasad* v. *Malluram Singhania*, [1969] 3 SCC 595; *Rahim Khan* v. *Khurshid Ahmed*, AIR (1975) SC 290; *Bir Chandra* v. *Anil Sarkar*, AIR (1976) SC 603, *Lakshmi Raman* v. *Chandan Singh*, AIR (1977) SC 587 and *Amolak Chand* v. *Bhagwandas*, AIR (1977) SC 813. As such unless the Court is fully
F satisfied that the object of the mass feeding so arranged was only to induce the participants at such mass feeding to vote for the respondent, a finding of corrupt practice on that account cannot be recorded against the responded. It may be pointed out that although during the evidence, the witnesses have stated as already referred to above, that the respondent himself was present and was distributing the food, surpris-
G ingly, in the petition there is no such avernment. It has been simply stated there:-

> "During the interval between 26th May and 15th June 1991 under the guise of observing obsequies of the assassinated former
H Prime Minister a large scale free-feeding of the electorate in the

slum areas in the City and the poor localities in the villages was arranged by the Ist respondent, his election agent, his political party and other persons with the consent of the Ist respondent or his election agent in furtherance of prospects of election of the Ist respondent."

Thus there is no allegation that at any of such mass feeding, the respondent was present. It has simply been stated that it had been arranged by him, his election agent, his political party and other persons with the consent of the said respondent or his election agent. On behalf of the respondent, an objection was taken in respect of the pleading with respect to the mass feeding in para 17 of the election petition, that it was absolutely vague inasmuch as full particulars of the corrupt practice i.e. bribery by way of mass feeding had not been set forth as required by Section 83(1)(b) of the Act. It was pointed out that when the appellant stated in the election petition that a large scale free feeding of the electorate in the slum areas in the city and the poor localities in the villages, was arranged by the Ist respondent, his election agent, his political party and other persons with the consent of the respondent or his election agent', the statement was a mere reproduction of Section 123(1)(A) of the Act. It did not amount to a statement of material facts or to setting forth full particulars of the corrupt practice. There is substance in this contention. The pleading that "the mass feeding was either arranged by the respondent or his election agent or his political party or other persons with the consent of the respondent or his election agent" cannot be held to be in accordance with the requirements of Section 83(1)(a)(b) of the Act. It is vague and does not give any particulars. The elected candidate cannot meet such allegation. This Court from time to time has laid down as to how the requirement of Section 83(1) has to be complied with. Reference can be made to the cases of *Samant N. Balkrishna* v. *George Fernandez*, [1969] 3 SCR 603, *Udhav Singh* v. *M.R. Scindia*, [1976] 2 SCR 246, *Daulat Ram Chauhan* v. *Anand Sharma*, [1984] 2 SCR 419, *Azhar Hussain* v. *Rajiv Gandhi*, [1986] 2 SCR 782, *Dhartipakar Madan Lal Agarwal* v. *Rajiv Gandhi*, [1987] 3 SCR 369, *F.A. Sapa* v. *Singora*, [1991] 2 SCR 752, where it has been pointed out by this Court that requirement of sub-section 1(a)(b) of Section 83 of the Act regarding statement of materials facts and setting forth of full particulars of any corrupt practice has to be complied with in the election

A petition. Apart from that, as already mentioned above, the advertisements as well as the witnesses on behalf of the appellants have stated categorically that such mass feeding had been arranged after 26.5.1991 the original date fixed for the election, "in the memory of Rajiv who died for country". In the election petition it has not been stated that respondent or any person B on his behalf requested the persons participating at the mass feeding, to vote in favour of the respondent. Same is the position so far the oral evidence adduced on behalf of the appellant is concerned. If the mass feeding had not been held against the background of the assassination of Shri Rajiv Gandhi, this Court could have examined as to whether arranging C feasts before or during the election amounted to the corrupt practice. The High Court has rightly come to the conclusion that in the special facts and circumstances of the present case, it is not possible to hold the respondent guilty of the charge of bribery, by arranging mass feeding.

Regarding the charge of excessive expenditure at the said election in D contravention of Section 77 of the Act is concerned, it has been stated by the appellant C. Narayanaswamy in paragraphs 21 to 26 of the election petition as to how the respondent incurred expenditure beyond the limit of Rs. 1,50,000 as fixed under rule 90 of the conduct of Election Rules, 1961 read with Section 77 of the Act. It has been stated that the respondent E published advertisement in News papers in Kannada, English, Urdu and Tamil, appealing to the voters to vote in his favour. Such advertisement had been published under the signature of the respondent. According to the appellant, the advertisement charges in respect of such advertisement alone shall be far in excess of the ceiling limit of Rs. 1,50,000. The said expenditure has not been included in the election expenses submitted by F the respondent. It has been stated that the respondent got printed posters in multi colours with his portrait appealing to the voters to cast their votes in his favour. The cost of printing of such posters on a modest estimate would be not less than a rupee per copy. It has been asserted that the minimum number of such posters would not be less than one lakh. The G expenditure incurred on advertisements and printing of posters had not been included in the election expenses submitted by the respondent. It has been stated that statement at the foot of the advertisements and the posters to the effect that it had been issued by "the General Secretary, Karnataka Pradesh Congress (I) Committee, Bangalore" was false; as a matter of fact, it was the respondent who had paid for those advertisements and posters. H It has also been stated that booklets in Kannada, English, Urdu and Tamil

containing the achievements of the respondent, during his membership of the Parliament had also been published. The number of copies of such booklets in each language was not less than 50,000. Even if the cost of each booklet is calculated at rupee one each the estimated total cost of publishing the booklets in four languages shall be not less than Rs. 2 lakhs. In the return showing the expenditure incurred by the respondent, the cost of printing of booklets had not been included. It has been stated in the election petition, that big cutouts of resondent and the then President of the Congress (I) party were put up through out the constituency. The cost of each of the cutout was not less than a thousand rupees and on a modest estimate the cost of making and erecting a hundred of such cutouts would not be less than Rs. 1 lakh. This expenditure has also not been included in the election expenses submitted by the respondent. The respondent had also got several paintings on the different walls within the constituency, appealing to the voters to vote in his favour. Expenditure incurred in respect of such wall paintings has also not been included in the return filed by the respondent. It has been stated that apart from the advertisement, posters, booklets, cutouts, wall paintings, hoardings of different sizes, the biggest size being 15' x 10' and the smallest being 3' x 2' had been put on throughout the constituency. The cost of erection and painting of the hoardings of the size 15' x 10' would not be less than Rs. 10,000. According to the appellant, the cost of these huge hoardings would be not less than Rs. 50,000 and the cost of small hoardings shall also be not less than Rs. 50,000. These expenses were also not included in the return submitted by the respondent.

The Stand of the respondent is that whenever elections are held, respective Congress Committees take the responsibility of campaign and publicity on behalf of the party candidates. All India Congress Committee assists the candidates contesting from the party, by providing posters, banners, manifestoes, pamphlets and handbills and various other kinds of materials in different languages. The campaign materials are distributed to different Congress Committee right from the All India level to the unit level. Pradesh Congress Committee supports such candidate in campaign. Depending on the local needs, they provide the necessary publicity materials. Respondent stated that he did not make any request to Karnataka Pradesh Congress Committee (I) to issue any advertisements on his behalf. He also claimed that he had not incurred any expenditure other than what had been disclosed in the return of the expenditure (Ex. P. 20). When the advertisements issued in newspapers were shown to his, he stated

A in his evidence that he had not incurred any expenditure on those advertisements and the expenditure had been incurred for the same by the party. He also denied to have published the booklets in English, Tamil or Kannada. He also denied to have got the wall posters printed or any cutouts made or got them installed in any part of the constituency. He stated that he had not incurred any expenditure in relation to cutouts, wall paintings, B hoardings. The factum of several advertisements issued in different newspapers, publication of booklets, cutouts, wall posters, hoardings, appealing to voters to vote in favour of the respondent does not appear to be in dispute. The stand of the respondent is that the party has incurred all the expenses and he has not incurred any expenses beyond what has been C shown in the statutory return.

Section 123(6) says that the incurring or authorising of expenditure in contravention of Section 77 shall be deemed to be a corrupt practice, for the purpose of the said Act. The relevant part of Section 77 is as follows:-

D

> Section 77(1) "*Account of election expenses and maximum thereof.*- (1) Every candidate at an election shall, either by himself or by his election agent, keep a separate and correct account of all expenditure in connection with the election incurred or authorized E by him or by his election agent between the date on which he has been nominated and the date of declaration of the result thereof, both dates inclusive.
>
> Explanation 1. Notwithstanding any judgment, order or decision of any court to the contrary, any expenditure incurred or F authorized in connection with the election of a candidate by a political party or by any other association or body of persons or by any individual (other than the candidate or his election agent) shall not be deemed to be, and shall not ever be deemed to have been expenditure in connection with the election incurred or authorized by the candidate or his election agent for the purposes G of this sub-section.

Explanation (1) aforesaid was introduced by Act No.58 of 1974 w.e.f. 19.10.1974. It may be mentioned that this Court on 3.10.1974, in the case of *Kanwar Lal Gupta* v. *Amar Nath Chawla*, [1975] 3 SCC 646, while H examining the scope of Section 77 (1) had observed :-

"When the political party sponsoring a candidate incurs expenditure in connection with the election, as distinguished from expenditure on general party propaganada, and the candidate knowingly takes advantage of it or participates in the programme or activity or fails to disavow the expenditure or consents to it or acquiesces in it, it would be reasonable to infer, save in special circumstances, that he impliedly authorised the political party to incur such expenditure and he cannot escape the rigour of the ceiling by saying that he has not incurred the expenditure, but his political party has done so. A party candidate does not stand apart from his political party and if the political party does not want the candidate to incur the disqualification, it must exercise control over the expenditure which may be incurred by it directly to promote the poll prospects of the candidate. The same proposition must also hold good in case of expenditure incurred by friends and supporters directly in connection with the election of the candidate. This is the only reasonable interpretation of the provision which would carry out its object and intendment and suppress the mischief and advance the remedy by purifying our election process and ridding it of the pernicious and baneful influence of big money."

To take away the effect of the judgment of this Court in the case of *Kanwar Lal Gupta* (Supra) the explanation aforesaid was introduced saying that notwithstanding any judgment, order or decision of any Court to the contrary, any expenditure incurred or authorised in connection with the election of a candidate by a political party or by any other association or body of persons or by any individual (other than the candidate or his election agent) shall not be deemed to have been, expenditure in connection with the election, incurred or authorised by the candidate or by his election agent for the purposes of the said sub-section.

The validity of the said explanation was questioned before this Court. A Constitution Bench of this Court in the case of *P. Nalla Thampy Terah* v. *Union of India*, [1985] Supp. SCC 189, observed that petitioner in that case was not unjustified in cirticising the provision contained in Explanation 1 as diluting the principle of free and fair elections, which is the corner stone of any democratic polity, but was not for the Court to lay down policies in matters pertaining to elections. As the said amendment in sub-section 1 of Section 77 of the Act did not violate the constitution, it

A could not be declared to be invalid although this Court may not approve the policy which underlines it. It was further said :—

> "While we are on this question, we would like to point out that if any expenditure which purports to have been incurred, for example, by a political party, has in fact been incurred by the
B candidate or his election agent, Explanation 1 will not be attracted. It is only if the expenditure is in fact incurred or authorised by a political party or any other association of body of persons, or by an individual (other than the candidate or his election agent) that the Explanation will come into play. The candidate cannot place
C his own funds in the power or possession of a political party, or a trade union or some other person and plead for the protection of Explanation 1. The reason is that, in such a case, the incurring of the expenditure by those others, is a mere facade. In truth and substance, the expenditure is incurred by the candidate himself
D because, the money is his. What matters for the purpose of Explanation 1 is not whose hand it is that spends the money. The essence of the matter is, whose money it is."

It is true that right to elect or to be elected is pure and simple a statutory right and in the absence of the statutory provision neither a citizen
E has a right to elect nor has he a right to be elected, because such right is neither a fundamental right nor a common law right. The same is the position so far as the right to challenge an election is concerned. It flows from the provisions of the Act itself. As such the right of a person to question the validity of an election is dependent on the conditions
F prescribed in the different sections of the Act and the rules framed thereunder. It was open to the Parliament to any that any expenditure incurred by a political party or by any other association or body of persons or by any individual other than the candidate or his election agent, shall not be deemed to be expenditure in connection with the election, incurred or authorised by the candidate or his election agent for the purpose of
G sub-section (1) of section 77 read with rule 90 aforesaid.

At the same time we cannot resist from observing that sub-section (6) of section 123 which makes incurring or authorising expenditure in contravention of Section 77, a corrupt practice because of the aforesaid
H Explanation 1 to Section 77(1) has become nugatory and redundant. Sub-

section (6) of Section 123 read with the Section 77 and rule 90, purports to restrict the unlimited flow of money power, and makes expenditure in excess of the limit fixed, a corrupt practice, but legality and sanctity has been given to such excess expenditure by explanation 1 aforesaid, which fixes no limit on the expenditure in connection with the election of a candidate. Neither the candidate nor the political party nor the persons who incur such huge expenditure, for the candidate are required to disclose the same to anyone. It need not be impressed that it is not always possible for the election petitioner to prove or even for the Courts to record a finding that the fantastic expenditure in the election, has been incurred or authorised by the candidate concerned or by his election agent, although the court is satisfied on the material on record that the limit fixed by the Act and the rules has been far exceeded in any particulars case.

In England, before the passing of the Representation of People Act, 1949, the view had been expressed that expenses incurred without the authority of the candidate or election agent for promoting or procuring the election of a candidate might not require to be returned as election expenses provided the expenses were incurred by person who were outsiders and not agents and accordingly did not have any part in the conduct or management of the election. In order to put a stop to the practice by which such expenses were incurred by third parties but were not reflected in the candidate's election expenses, it has been provided that certain expenses with a view to promoting or procuring the election of a candidate at an election must be incurred by any person other than the candidate, his election agent or the person authorised in writing by the election agent. If any person incurs, or aids, abets, counsels or procures any other person to incur any expenses in contravention of this provision, he is guilty of a corrupt practice. If any person not engaged or payment or promise of payment by the candidate or his election agent incurs any expenses required to be authorised by the election agent, he must within fourteen days after the publication of the result of the election make a return of the expenses and a declaration verifying the return. (See Halsbury's *Laws of England*, 4th Edn., Vol. 15, Paragraphs 721-722).

As the law stands in India today anybody including a smuggler, criminal or any other anti social element may spend any amount over the election of any candidate in whom such person is interest, for which no account is to be maintained or to be furnished and any such expenditure

A shall not be deemed to have been expenditure in connection with the election, incurred or authorised by the candidate or by his election agent for the purpose of sub-section (1) of Section 77, so as to amount to a corrupt practice within the meaning of sub-section (6) of Section 123. It is true that with the rise in the costs of the mode of publicity for support of the candidate concerned, the individual candidates cannot fight the election without proper funds. At the same time cannot be accepted that such funds should come from hidden sources which are not available for public scrutiny. According to us, sub-section (6) of Section 123 declaring "incurring or authorising of expenditure in contravention of Section 77" a corrupt practice has lost it significance an utility with the introduction of the Explanation 1 aforesaid which encourages corruption under hand methods, if the call for "purity of elections" is not to be reduced to a lip service or a slogan, then the persons investing funds, in furtherance of the prospect of the election of a candidate must be identified and located. The candidate should not be allowed to plead ignorance about the persons, who have made contributions and investments for the success of the candidate concerned at the election. But this has to be taken care of by the Parliament.

So far the facts of the present case are concerned PW1 the election petitioner has supported in his evidence the allegations made in the election petition regarding excessive expenses over the advertisements, posters, booklets, cut outs, hoarding s and wall posters. He has also pointed out that in many of the advertisements, appeal had been made, soliciting votes in the name of the respondent. On the basis be took a stand that those advertisements, appeals and posters had not been issued on behalf of Congress (I) party but the respondent and as such he should have shown the expenses incurred over the same in his return of the expenses of the election. As the law exist today, it is not possible for the Court to hold that such expenditure had been actually incurred by the respondent. On behalf of the respondent, it was pointed out that in most of the advertisements, cutouts and hoardings, it had been mentioned that they were being issued on behalf of the party, to which the respondent belonged.

Sub-section (1) of Section 77 requires every candidate at an election to keep a separate and correct account of all expenditure in connection with the election "incurred or authorised by him or by his election agent". Explanation 1 is in the nature of a provision to the said sub-section (1) of Section 77, inasmuch as it provides that if the expenditure has been

incurred by a political party or by any other association or body of persons or by any individual other than the candidate or his election agent, it shall not be deemed to be expenditure in connection with the election incurred or authorised by the candidate or his election agent, for the purpose of sub-section (1) of Section 77. The initial onus is on the election petitioner to satisfy the court on basis of the materials produced by him, that the candidate concerned has incurred expenditure in connection with the election in excess of the limit fixed by the rule 90 aforesaid. If it appears that such expenditure has been incurred by the candidate or has been authorised by the candidate or his election agent, then the explanation being in the nature of a proviso to sub-section (1) of Section 77, the onus will shift on the candidate to show to the Court that the excess expenditure beyond the limited fixed by rule 90 has been incurred either by the political party or by any other association or a body of persons or by any individual other than the candidate or his election agent.

As in the present case, the appellant, who was the election petitioner before the High Court except stating the details of a expenditure, over different advertisements, posters, booklets, cutouts, hoardings etc., in connection with the election, has not produced any evidence to satisfy even in a *prima facie* manner that expenditure over such advertisments, booklets, cutouts, hoardings, posters, etc., had been actually incurred by the respondent. Although in the advertisements and posters it had been specifically mentioned that they were being issued on behalf of the political party, to which the respondent belonged, the appellant has not discharged the onus placed on him. The appellant was required to produce some materials in support of his assertion. The oral statement made by the appellant has been contradicted by the respondent, by stating on oath that expenditure over such advertisements, posters, cutouts, booklets, hoardings, etc., had been incurred by the political party and as such the case is covered by explanation 1 to sub-section (1) of section 77 of the Act.

The appellant in Civil Appeal No. 2543 of 1993, who appeared before us in person, took a stand that in the present case, the declaration of the result of the respondent itself was in contravention of the provisions of the Act, inasmuch as several thousand of votes, which should have been rejected, were counted in his favour, which has materially affected the result of the election. The result as per form No. 20E (Ex. P.3) is as follows:—

"RESULTS AS PER FORM NO, 20E:

(Ex. P. 3)

(a) Total number of voters	13,33,426
(b) Total number of votes polled	6,04,604
(c) Total number of votes rejected	12,748
(d) Votes polled in favour of Sri Jaffer Sharief (Respondent No.1)	2,52,272
(e) Votes polled in favour of Sri C. Narayanaswamy (Appellant in C.A. No. 7194 of 1993)	1,91,955
(f) Votes polled in favour of Smt. Pramila Nesargi (Appellant in C.A. No. 2543 of 1993)"	1,45,074

It is alleged that respondent got printed with the help of the Returning Officer more than 2 lakhs ballot papers in excess and those ballot papers have been pushed in the ballot boxes, either at the polling station or during transmission or while counting.

It appears that the Chief Electoral Officer addressed a letter on 23.4.1991 to the director of Printing and Stationery, requesting him to make arrangements for printing of ballot papers at the Government Central Press, Bangalore under strict security. The Director of Printing and stationery had also received a copy of the telex message sent on 24.10.1989 in regard to the printing of number on the ballot papers in respect of Parliamentary constituencies, where the voters consisted of more than 10 lakhs. It was indicated therein, to print the ballot papers upto 999999 in six digits. Therefore, to start a new series in six digits with prefix 'A'. One N.K. Narayan, Deputy Secretary, BDA, was deputed for proof reading, supervision, checking and bundling of ballot papers in respect of Bangalore North Parliamentary constituency. A direction was given to supply 13, 78,000 ballot papers serially as indicated in the letter aforesaid. DW3, the Director of Printing and stationery, has stated the details of the procedure regarding the printing and other information connected with the printing of the ballot papers. He has denied the allegation made by the appellant

that he got printed over 2 lakhs ballot papers in excess of the actual requirement and allowed the respondent to take away those ballot papers, He has stated that with the printing facility available at Bangalore, the ballot papers up to 999999 in six digits were printed. In absence of availability of seven digits printing machine after ten lakhs, letter 'A' was prefixed to the numbers. In other words after 10 lakhs the ballot papers for the said constituency again were numbered as, 000000 with a prefix 'A' to distinguish them from the ballot papers of the same number printing within 10 lakhs. According to the appellant, these ballot papers with a prefix 'A' were spurious and respondent got them printed to insert in different ballot boxes in his favour. This argument has been advanced on the basis of Form 16 submitted in connection with the counting of ballot papers. In many of such Form 16 in connection with ballot papers above 10 lakhs instead of 'A', '1' has been noted. The High Court has dealt with this question in detail. It appears that in Form 16 by mistake instead of 'A' as prefix' '1' has been mentioned. The forms 16 were examined by us also during the hearing of the appeal in presence of the appellant. The stand of the Director of printing and Stationery appears to be correct that after 10 lakhs, the remaining ballot papers were printed starting from 000000 with a prefix 'A', which were used at the said election and they are not spurious ballot papers. It appeared to be an admitted position that in Bangalore there was no facility of printing ballot papers in seven digits and because of that 'A' was added as prefix to the ballot papers printed beyond 10 lakhs. As such we are in agreement with the finding of the High Court that merely because in the Form 16, instead of 'A' '1' has been mentioned as prefix to the numbers of ballot papers beyond the first 10 lakhs, it cannot be held that ballot papers beyond the number of 999999 were spurious and duplicate and were used by respondent in surreptitious manner, which has materially affected the result of the election.

Accordingly, the appeals are dismissed. But in the facts and circumstances of the case, there shall be no order as to costs.

A.G. Appeals dismissed.