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RAJENDRA PRASAD JAIN

v.

SHEEL BHADRA YAJEE & ORS.

February 28, 1967

B [K. N. WANCHOO, R. S. BACHAWAT AND V. BHARGAVA, JJ.]

Election Petition—Bribery and offer of bribery alleged—Facts which court can take into consideration—Offer of bribe whether must be of specific amount to be corrupt practice.

Letters Patent—Difference among Judges constituting Division Bench—Reference whether can be made to a single Judge—'Bench' whether includes single Judge.

C

Respondent No. 1 challenged the election of the appellant to the Rajya Sabha on the alleged ground of corrupt practice consisting of bribery as well as offer of bribery. The Tribunal held that both the above mentioned types of corrupt practices were proved against the appellant. The High Court upheld the order of the Tribunal holding only that offer of bribe in two cases was proved. The appellant came to this Court with certificate. It was urged that (i) when the Division Bench which originally heard the appeal, on difference arising among the Judges constituting it, asked for a reference to another bench, the Chief Justice had no power under Art. 28 of the Letters Patent to refer the matter to a single Judge, (ii) this Court should examine the evidence as to offer of bribe to certain persons for itself, as the High Court had misread the evidence and had relied on certain irrelevant pieces of evidence, (iii) the facts proved did not justify a finding that bribe was offered by the appellant.

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HELD : (i) Under Art. 28 of the Letters Patent the reference of the case to a single Judge was competent. The word 'Bench' in the Article includes a single Judge. [21 H]

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(ii) In considering the allegations of bribery against the appellant the court was entitled to take into consideration the fact that the appellant was a man of means and that he had no political background in Bihar where he did not have a permanent residential house. There was no misreading of the evidence by the High Court and no case had been made out for a re-appraisal of the findings. [23 B-C, H]

G

(iii) The proposition cannot be accepted that an offer of bribery cannot be held to be such unless a specific amount is mentioned in the offer. [27 D]

Emperor v. *Amiruddin Salebhoy Tyabjee*, A.I.R. 1923 Bom. 44, *Emperor* v. *Choube Dinkar Rao & Ors.* A.I.R. 1933 All. 513. *In the matter of Balls* v. *The Metropolitan Board of Works*, (1865-66) 1 Q.B. Cases 337, *Mohan Singh* v. *Bhanwarlal & Ors.* A.I.R. 1964 S.C. 1366 and *Union of India* v. *H. C. Goel*, A.I.R. 1964 S.C. 364, distinguished.

H

Chatturbhuj Vithaldas Jasani v. *Moreshwar Parashram & Ors.* [1954] S.C.R. 817, *Case No. XII of Borough of Staleybridge*, (1869) I O'Malley and Hardcastle p. 66 and *Case No. XV of Borough of Coventry*, (1869) I O'Malley and Hardcastle p. 97, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1454 of 1966. A

Appeal from the judgment and order dated March 3, 1966 of the Patna High Court in Election Appeal No. 3 of 1965.

Veda Vyasa, K. K. Jain and *R. Gopalakrishnan,* for the appellant. B

K. P. Varma and *D. Goburdhun,* for respondent No. 1.

The Judgment of the Court was delivered by.

Bhargava, J. In 1964, there were eight vacancies in the Rajya Sabha for which members had to be elected from the constituency of the Legislative Assembly of Bihar. The election C was to be held on 26th March, 1964. It appears that the Congress Party put up 6 candidates out of the total of 13 candidates who were nominated for these eight vacancies. Two of the candidates withdrew after scrutiny of nomination papers and, consequently, for the actual election there were 6 Congress candidates and 5 others. Amongst these 5 others was the appellant Rajendra Prasad Jain who was standing as an Independent D candidate. One of the Congress candidates was respondent Sheel Bhadra Yajee. At the election, Rajendra Prasad Jain was declared as one of the elected candidates, while respondent Sheel Bhadra Yajee was unsuccessful. Respondent No. 1, Sheel Bhadra Yajee, then filed an election petition challenging the election of the appellant to the Rajya Sabha. The main ground for challenge E was that the appellant had committed the corrupt practice of bribery or offer of bribery in order to secure his election. In the election petition as originally filed, Schedule I contained the names of five persons to whom, it was alleged, bribe had actually been paid by the appellant. Schedule II contained the names of five persons to whom bribe had been offered by the appellant. By F a subsequent amendment, three fresh names were added in Schedule I and five in Schedule II. The amendment having been allowed by the Election Tribunal, the petition, at the stage of the trial, contained allegations of payment of bribe to eight persons and of offer of bribe to ten persons. In the actual trial, however, evidence was not tendered in respect of some of these allegations. G The Election Tribunal, after full trial of the petition, held that respondent No. 1 had succeeded in proving that the appellant had given bribes to three of the persons mentioned in Schedule I and had offered bribe to four persons mentioned in Schedule II. The appellant appealed to the High Court at Patna. In the High Court, when the appeal was heard by a Division Bench, one member Mahapatra, J., held that none of the allegations of payment H of bribe or of offer of bribe had been proved and was of the view that the appeal should be allowed and the election petition dismissed. The other member, Ramratna Singh, J., agreed with

A Mahapatra, J. with regard to the three instances of giving bribe to the three persons mentioned in Schedule I and also with regard to the offer of bribe to two of the persons mentioned in Schedule II. With regard to two instances of offer of bribe in Schedule II, he disagreed with Mahapatra, J. and upheld the decision of the Election Tribunal. The two persons in whose cases the offer of B bribe was held proved by Ramratna Singh, J. were Shah Mustaq Ahmad and Ram Narain Choudhary who were both members of the Bihar Legislative Assembly and belonged to the Congress Party. Owing to this difference of opinion, the two learned Judges directed that the case may be placed before the Hon'ble the Chief Justice for reference of the point of difference to another Bench under Art. 28 of the Letters Patent. Under the directions of C the Chief Justice, the appeal came up before U. N. Sinha, J., who, in both cases, agreed with the view taken by Ramratna Singh, J. and, consequently, in accordance with the view of the majority, the Court ultimately dismissed the appeal holding that the offer of bribe by the appellant to Shah Mustaq Ahmad and Ram Narain Choudhary had been proved. The appellant has D now come up in appeal to this Court under certificate granted by the High Court at Patna against this judgment of that Court.

In his appeal, three points were urged by Mr. Veda Vyas, learned counsel for the appellant. The first question of law raised was that the Division Bench of the Patna High Court, which first heard the appeal, made a direction that the case is to E be placed before the Chief Justice for reference of the point of difference to another "Bench" under Art. 28 of the Letters Patent and, consequently, the reference made subsequently by the Chief Justice to a single Judge was not competent. It was urged that the use of the expression "another Bench" in the referring order meant that the case had to be laid by the Chief Justice before a F Bench of two or more Judges and not before a single Judge. There are two reasons why, in our opinion, this submission has no force. The first is that the word "Bench" used in the referring order cannot be interpreted as necessarily indicating that the case must be laid before two or more Judges. In this connection, the language of Rule 1(xi) and r. 3 of Chapter II of the Rules of the High Court at Patna is significant. Under r. 1(xi), a case G under the Indian Companies Act is to be heard by a single Judge; and r. 3 indicates the nature of one of the orders which can be passed by a Bench hearing the case under r. 1(xi). Thus, in r. 3 of the Rules of the High Court at Patna itself a single Judge is referred to as a Bench. In fact, it is well-known that, when referring to Judges of the High Court sitting to decide a case, the H expressions frequently used are Single Bench and Division Bench. The word "Bench" used in the referring order, even in its ordinary connotation, would, therefore, include a single Judge. The second aspect is that the order of reference mentions that the case

is to be placed for reference under Art. 28 of the Letters Patent. Article 28 of the Letters Patent lays down that, in such circumstances, the case is to be referred to one or more of the other Judges of the High Court. This reference to Art. 28 of the Letters Patent also thus clarifies that under the order of reference made by the Division Bench which first heard the appeal, the case was intended to be placed before the Chief Justice for reference to one or more of the other Judges of the Court. Further, under the Rules of the High Court at Patna, the Chief Justice had the discretion to decide whether a case placed before him under Art. 28 of the Letters Patent should be heard by one Judge or more Judges than one, and this power of the Chief Justice was actually exercised when, in this case, he directed that the case be laid before U. N. Sinha, J. The reference to U. N. Sinha, J. and his decision were, therefore, not incompetent.

The second point urged by learned counsel was that the finding recorded by the High Court of Patna that the two instances of offer of bribe by the appellant to Shah Mustaq Ahmad and Ram Narain Choudhary were proved was incorrect. He urged that we should go into the merits of this finding on the ground that at least one of the Judges who recorded that finding, *viz.*, Ramratna Singh, J., had misread evidence and had taken into consideration irrelevant matters. He pointed out to us that Ramratna Singh, J., had held at p. 454 of the Paper-book that "it is true that P.W. 2 did not disclose the names of P.Ws. 9 and 14 to Yajee before September or October, 1964, but the non-disclosure of the names of persons to whom he had spoken about the incident when the first talk with Yajee took place is not material." P.W. 2 was Ram Narain Choudhary who was one of the persons to whom bribe was alleged to have been offered by the appellant, and P.Ws. 9 and 14 were two persons examined to corroborate him. Respondent Yajee, in the trial of the election petition, did not disclose the names of P.Ws. 9 and 14 to the Court when he gave the first list of his witnesses in October, 1964, and it was from this circumstance that the learned Judge drew the inference that the names of these two persons had not been disclosed by P.W. 2 to respondent Yajee before September or October, 1964. Learned counsel pointed out that Yajee had admitted that the names of these two witnesses had been disclosed to him in September, 1964. It, however, appears that it cannot be held that the learned Judge committed an error of misreading evidence if he chose not to rely on this admission of Yajee and preferred the evidence which showed that the names of these two witnesses had not been disclosed to him before September or October, 1964. This may be at best a question as to the weight to be attached to different pieces of evidence and cannot be held to be an instance of misreading of evidence.

A As regards the second aspect of reliance on irrelevant evidence by Ramratna Singh, J., it was urged that in his judgment at p. 444 of the Paper-book he referred to the fact that the appellant is a man of means and that he had no political background in Bihar where he did not have a permanent residential house. It was urged that these facts were totally irrelevant to the charge of B giving or offering of bribe in order to secure his election. We fail to see how it can be held that the fact that the appellant had no political background in Bihar and was a man of means is irrelevant. These considerations could certainly be relevant for holding whether it was probable that the appellant would offer bribes or give bribes to secure his election. Obviously, a person C who had no means at all could not possibly offer bribes or give bribes inducing voters to vote for him, and the fact that he had no political background could easily be the reason why the appellant might have resorted to this corrupt practice for securing votes. Reference was also made to a part of the judgment at p. 451 of the Paper-book where the learned Judge held that a candidate who wanted to bribe a voter would at first send some D feeler before making the offer; but there was not much time left, as the allotments to different Congress candidates were made by the leader of the party only on the 24th or 25th March and election was to take place on the 26th March. It was urged on behalf of the appellant that this reference to the allotment to different Congress candidates was irrelevant. We are unable to E find any force in this submission. It appears that the system was that the members of the Congress Party in the Bihar Legislative Assembly were divided into six groups and each group was asked to vote for a particular candidate. This was the allotment referred to by the learned Judge. This circumstance is quite relevant, because it is obvious that another candidate seeking to bribe a F voter of the Congress Party would only approach that voter who may have been allotted for voting to a candidate whom he did not like or whom, for some other reason, he would not be keen to support, while it would be futile to approach a voter who had been asked to vote for a candidate with whom he was on friendly terms or whom he was himself keen to support. It cannot be said in these circumstances that any irrelevant material was taken into G account by the learned Judge at this stage. We cannot, therefore, hold that there was any such misreading of evidence or admission of irrelevant evidence which would justify our reopening findings of fact which have been concurrently recorded by the Election Tribunal at the stage of trial and by the High Court at the stage of appeal. Consequently, we reject the suggestion of learned H counsel that we should for ourselves go through the evidence and re-examine on merits, after weighing evidence, the concurrent finding of fact that the appellant was proved to have offered bribes to Shah Mustaq Ahmad and Ram Narain Choudhary.

The last and the third point urged by learned counsel was that, even on findings of fact recorded by the High Court, we must hold as a question of law that there was in fact no offer of bribe by the appellant. This argument was urged on the basis that the finding recorded did not show that any specific amount was offered as bribe to either Shah Mustaq Ahmad or Ram Narain Choudhary. In the case of Shah Mustaq Ahmad, the finding is that the appellant had said to him : "In your election a lot of money is spent and, therefore, take some money from me and cast your first preference vote in my favour." In the other case of Ram Narain Choudhary, the significance of the offer is very clear when the actual words in Hindi used by the appellant are considered. They were as follows :—

> "Is Par Jain Saheb Ne Kaha Ki Apko Bhi To Election Men Kharch Burch Hua Hoga. Isliye Ham Upko Kuchh Seva Karna Chahete Hain. Ap Hamare Madad Kijiye."

It is true that in these words there was no direct offer of giving money, but the language used clearly indicated that the appellant was offering his services in the form of contribution towards the expenditure which Ram Narain Choudhary had incurred in his own election to the Bihar Legislative Assembly. In both cases, therefore, it is clear that an offer of payment of money was made by the appellant to these voters to induce them to cast votes for him in the election to the Rajya Sabha.

Learned counsel, however, urged that as long as no specific amount was offered by the appellant, there was, in fact, no offer of bribery. According to him, it was still a stage when an intention of offering bribery was expressed, but no offer of bribery was actually made. An offer, it was urged, must be held to be made only when a specific sum is mentioned as the amount of bribe to be given and there is to be no negotiation about the amount. In this connection, learned counsel drew our attention to the meaning given to the word "offer" as explained in Halsbury's Laws of England, 3rd Edn., Vol. 8, at p. 69. Halsbury, at that stage, deals with the meaning of the word "offer" as used in connection with the law of contract; and we do not think any assistance can be taken from the principle laid down therein. He also made a reference to some Indian cases dealing with the meaning of the word "offer" in connection with the offer of bribery under the Criminal Law. The case mainly relied upon was *Emperor* v. *Aminuddin Salebhoy Tyabjee*(1), where the accused was alleged to have used the words : "my cousin wishes to give you Rs. 5,000" to a government servant. It was held that these words did not constitute an offer of bribery. We do not think that that case is

(1) A.I.R. 1923 Bom. 44.

A at all parallel with the case before us. In that case, the accused himself did not offer any bribe and all that he did was to indicate to the government servant that his cousin wanted to give to the government servant the sum of Rs. 5,000. There was, thus, no direct offer by the accused of bribery to the government servant.

B In *Emperor* v. *Choube Dinkar Rao and Others*(1), Dinkar Rao accused admitted that he went to a Judge and told him that the plaintiff would pay Rs. 10,000 if the suit were decreed, but denied that he had gone on behalf of the plaintiff. Once again, that was a case where there was no offer of payment of any money by the accused to the Judge. In the instant case, the words used C by the appellant clearly amounted to an offer to give money himself to the two voters.

Similarly, we do not think that any assistance can be taken from the decision of Blackburn, J. in *In the Matter of Balls* v. *The Metropolitan Board of Works*(2), where it was held in con- D nection with compensation for land that "the offer of compensation is to be an offer which the claimant can either accept or reject; if it is of one sum for compensation and costs, the claimant cannot know how much he is to have for the injury to his land and how much for his costs. He might, therefore, be misled by it." That was again a case where the point which came up for consideration before the learned Judge related to offer of com- E pensation for land which would be in the nature of an offer in connection with a contract and not an offer of bribe under the election law.

Reliance was also placed on the view expressed by this Court in *Mohan Singh* v. *Bhanwarlal and Others*(3), in which, dealing F with gratification under the Election Law, it was held : "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; but a mere offer to help in G securing employment to a person with a named or unnamed employer would not amount to such gratification." We again fail to see how that decision affects the point before us. In that case, all that was held was that a mere offer of help in securing employment with another person does not amount to gratification. In the case before us, the offer was clearly in respect of money and, if accepted, it would naturally satisfy the voter's desire to acquire H money.

(1) A.I.R. 1933 All. 513.

(2) (1865-66) I Q.B. Cases 337.

(3) A.I.R. 1964 S.C. 1366.

Reference was also made to the decision of this Court in *Union of India* v. *H. C. Goel*(1), where it was held that the respondent had taken out a hundred rupee note from his wallet in the presence of a government servant whom he had approached in connection with his work, and the government servant showed his stern disapproval of this conduct, whereupon the respondent said "No" and put the wallet with the note in his pocket. The facts in that case were also clearly different, because all that was held by this Court was that the mere taking out of the note from the wallet did not amount to an offer, while, in the case before us, the finding was that there was a clear offer to give money.

In this connection, we may refer to the decision of this Court in *Chatturbhuj Vithaldas Jasani* v. *Moreshwar Parashram and Others* (2), where the Court had to consider existence of a contract for supply of goods in connection with deciding the disqualification of a candidate as set out in s. 7(d) of the Representation of the People Act 1951. The Court, in dealing with this aspect, distinguished between a contract for purposes of the Contract Act and a contract for purposes of the Election Law. 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 expression 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".

In *Case No. XII of Borough of Staleybridge*(3), Blackburn, J. had to deal with the question of interpreting the giving of bribery under the election law then prevalent in England. At that time, the offer of a bribe was not a corrupt practice under the law there, and yet Justice Blackburn said that: "There can be no doubt that a promise or offer to cause a workman or other person to be no loser by his coming to vote comes within the meaning of the Act, and is an act of bribery and corruption. Thornley and Vaughan distinctly offered and promised two voters that they should have their day's wages paid them if they would come and vote. That amounted to an act of bribery on the part of those who accepted it, and on the part of those who offered it."

In *Case No. XV of Borough of Coventry*(4), it was said: "With respect to bribery, as well as with respect to treating, I shall ever hold it to be a wise and beneficial rule of constitutional law, quite apart from the 17 & 18 Vict. c. 102, that for the purpose of securing purity and freedom of election, candidates should be answerable for the acts of their agents, as well as for their own

(1) A.I.R. 1954 S.C. 364. (2) [1954] S.C.R. 817.
(3) (1869) 1 O' Malley and Hardcastle p. 66.
(4) (1869) 1 O'Malley & Hardcastle p. 97.

A acts", and proceeding further, with regard to mere offers of bribe, it was said : "Although these cases have been classed below those of bribery by both the learned counsel, it cannot be supposed that an offer to bribe is not as bad as the actual payment of money. It is a legal offence, although these cases have been spoken of as being an inferior class by reason of the difficulty of B proof, from the possibility of people being mistaken in their accounts of conversations in which offers were made; whereas there can be no mistake as to the actual payment of money." In England, thus, the law relating to corrupt practice of giving bribery was extended to include offers of bribery, though it was held that stricter proof of offer of bribery should be insisted upon on the ground that there was a possibility of misunderstanding. In C the case before us, the offer was in such clear terms that there could be no misunderstanding. In both cases, and particularly in the case of Shah Mustaq Ahmad, the offer was of money to be paid in order to secure the votes. We are unable to accept the proposition suggested by learned counsel that an offer of bribery cannot be held to be such unless a specific amount is mentioned in D the offer. No such requirement is laid down by law, and if we were to accept this proposition, it would lay the field open for corruption in such a manner as to make the provision totally ineffective. A candidate wanting to secure a vote by bribery can always go and first ask the voter whether he is prepared to accept money as a bribe and need offer a specific sum only after the E voter has signified his assent. Once the voter actually accepts the offer, it is not likely that evidence of that instance of bribery will be available. The mere fact that a candidate goes and offers some money is enough to show that he has already made his offer to corrupt the voter and secure his vote, though there may still be a possibility that, if subsequently the negotiations as to the precise amount to be paid as bribe fail, he may not actually suc- F ceed in his objective. The offer of bribery in the manner proved in this case, in our opinion, clearly satisfies the requirements of section 123 of the Representation of the People Act. The decision of the High Court upholding that of the Election Tribunal setting aside the election of the appellant to the Rajya Sabha was, therefore, right and must be upheld. The appeal fails and is G dismissed with costs.

G. C.

Appeal dismissed.