

Karan Singh Vs. Jamuna Singh

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Court : Allahabad

Decided On : Apr-16-1958

Reported in : AIR1959All427

Judge : V. Bhargava and ;M.L. Chaturvedi, JJ.

Acts : [Representation of the People Act, 1951](#) - Sections 77, 77(1), 77(2), 77(3), 123(3) and 123(6); Emblems and Names (Prevention of Improper Use) Act, 1950

Appeal No. : First Appeal No. 24 of 1953

Appellant : Karan Singh

Respondent : Jamuna Singh

Advocate for Def. : Jagdish Swarup, Adv.

Advocate for Pet/Ap. : S.C. Khare and ;Kamal Narain Singh, Adv.

Disposition : Appeal dismissed

Judgement :

V. Bhargava, J.

1. The polling for the election of a member to the U. P. Legislative Assembly from Gunnaur constituency in district Budaun in the last general election took place on the 28th of February, 1957. The counting took place on the 2nd of March, 1957,

and, on the same date, the result was declared. Jamuna Singh respondent whose candidature was sponsored by the Praja Socialist Party, received 14361 votes and was declared elected. Karan Singh appellant received the next highest number of votes. He was a candidate on behalf of the Congress and he received 11007 votes. A third candidate, Kamal Prasad, was an independent candidate and he received 7227 votes. Karan Singh then presented an election petition to the Election Commission on the 15th of April 1957, which was referred for trial to the Election Tribunal, Budaun. The Tribunal dismissed this petition with costs on the 6th of December, 1957 and the present appeal has been filed against that dismissal of the petition.

2. In the election petition presented by the appellant, a number of grounds were put forward for the prayer that the election of the respondent be declared void. On the basis of these grounds and in view of other points arising the Tribunal framed 19 issues. It is not at all necessary to mention all those issues because, when learned counsel for the appellant began his argument in this appeal, he made a statement that he would confine his arguments to only a few issues, viz., issues nos. 1, 2, 8, 9, 10(a) to 10(d) and 13. He gave up the case of the appellant on the remaining issues so that we need not deal with them at all.

3. Issue No. 1 was framed on the basis of the allegation that the corrupt practice of bribery was committed by the respondent on the 6th January, 1957 at Babrala by making an offer or promise to Sri Komal Prasad, a partner in his firm, by relinquishing the profit of his share with the object of inducing him to stand at the election, as the respondent knew that he could not succeed in a direct contest and, for this reason, Komal Prasad fought the election. The Issue was 'Whether Komal Prasad was made to stand in the election as a candidate because of the offer or promise of the respondent to forego his share of profits in the partnership business. If so, its effect.' The respondent, of course, denied that he had, made any offer or promise to Komal Prasad in order to induce him to stand as a candidate at this election. The fact that Komal Prasad and the respondent are partners of a firm is admitted as also the fact that both of them stood as candidates from, the same constituency in addition to the appellant who was the third candidate. It is also admitted on behalf of the respondent that he and Komal

Prasad were on good terms before the election and continued to be on good terms even after the election. The burden, however, lay on the appellant to establish that Komal Prasad had been induced to stand as a candidate by the offer of a bribe by the respondent. To establish this allegation the appellant examined five witnesses. He could produce no documentary evidence at all. (After discussion of evidence His Lordship proceeded:)

In view of this state of evidence, we consider that the learned Judge of the Election Tribunal arrived at the correct finding that the appellant had failed to prove that any offer of a bribe was made to Komal Prasad to stand as a candidate or that any such offer was accepted by Komal Prasad.

4. The next issue, which we have to deal with, is issue no. 7 which is as follows:--

'Whether the respondent, his agents, supporters and workers with the consent and connivance of the respondent exhibited the photo of Mahatma Gandhi to further the prospects of the respondent's election? If so, its effect.'

The allegation in the election petition was that the respondent had made a systematic appeal to a national symbol by exhibiting the photo of Mahatma Gandhi, father of the nation, through pamphlets used in the election having these words written 'Congress Tor Do'. It was alleged that these pamphlets were used for the furtherance of the prospects of the respondent's election and such pamphlets were used throughout the days of election in the said constituency. It appears that the paper, which has been used, has been wrongly described, in the election petition as pamphlet. It is in fact a poster.

On the poster appears a portrait of Mahatma Gandhi and not a photograph. At the top of the poster is the sentence 'Congress Tor Do' with the name of Mahatma Gandhi under it in brackets, indicating that this sentence represented Mahatma Gandhi's views. In the portrait of Mahatma Gandhi his left hand is shown as raised with the palm outwards. The posture in the portrait thus indicates that he was making some exhortation. Then there, are figures of four persons who were walking towards a box which has on it a diagram of a hut. One of the four persons is casting a ballot paper in that box. At the bottom is an appeal to vote for the Praja

Socialist Party. It is alleged on behalf of the appellant that such posters were pasted at various places in this constituency and that this was done with the consent of the respondent.

5. The Election Tribunal has believed the evidence given on behalf of the appellant to show that such posters were used in the election with the consent of the respondent. (After discussion of evidence His Lordship proceeded:)

Considering the nature of the evidence as a whole, we are inclined to the view that, in this case, there is no sufficient material on the basis of which we can justifiably differ from the view taken by the Election Tribunal and set aside his conclusion that the use of these posters with the consent of the respondent has been established by the evidence given on behalf of the appellant.

6. The question, however, is whether the use of these posters constitutes the corrupt practice of the use of or appeal to the national symbol for the furtherance of the candidature of the respondent. As held by the Election Tribunal, the use of these posters was certainly likely to assist the candidature of the respondent. There can be no doubt that, in these elections, voters were likely to be very considerably influenced by whatever that may have purported to come from Mahatma Gandhi, the father of the nation. The poster indicated that one of the opinions of Mahatma Gandhi was that the Congress should be disbanded.

It may be that this view was expressed under special circumstances and at a time which may not be comparable with the time when these elections were held. There is however, the fact that the view expressed by Mahatma Gandhi was put forward before the voters at the time of election and it was very likely that the voters might have been influenced because they were led to believe that Mahatma Gandhi did not want the Congress to continue as such any longer. Further, the posture of Mahatma Gandhi in the portrait also indicates as if he was exhorting people to support the candidate of the Praja Socialist Party.

The fact that the hand, which is shown as raised, is the left hand and not the right hand would indicate that, by the portrait the impression that was sought to be given was only that Mahatma Gandhi was making exhortation and not that he was

giving a blessing. If the portrait had been intended to convey the giving of a blessing, the right hand would have been raised. However, the posture in the portrait indicating exhortation to support the Praja Socialist Party was also likely to influence the voters to support the candidate of that party. In these circumstances, the only question that remains to be examined is whether this poster or the portrait of Mahatma Gandhi on it, is a national symbol. If we hold it to be a national symbol the inference would follow that a national symbol had been used for the furtherance of the candidature of the respondent

7. We must confess that in dealing with the question as to whether the portrait of Mahatma Gandhi is a national symbol or not, we have experienced a certain amount of difficulty because the word 'symbol' is nowhere defined in law and we have to depend on the meaning given to the word 'symbol' in the dictionaries, which would appropriately fit in the context in which the word has been used in Section 123(3) of the Representation of the People Act (hereinafter referred to as the Act). In Murray's New English Dictionary, 1919 Edition (Oxford), various meanings of the word 'symbol' are given. We found by reference to other dictionaries available to us that this dictionary contains the most exhaustive collection of the meanings of this word and, consequently, we are referring to it. The first meaning given is

'A formal authoritative statement or summary of the religious belief of the Christian church or of a particular church or sect; a creed or confession of faith.'

The second is

'A brief or sententious statement; a formula motto, maxim; occasionally a summary, synopsis.' These meanings cannot be applied to the word 'symbol' as used in Section 123(3) of the Act. The third meaning, which appears to be the one that can be applied is something that stands for, represents, or denotes something else (not by exact resemblance, but by vague suggestion or by some accidental or conventional relation) especially a material object representing or taken to represent something immaterial or abstract, as being an idea, quality or condition; a representative or typical figure, sign Or token.'

The remaining meanings, which do not apply, are

'An object representing something sacred. A small device on a coin, additional to and usually independent of the main device or type. A written character or mark used to represent something, a letter, figure or sign conventionally standing for some object process etc.'

Learned Counsel for the respondent referred us to a book entitled 'Funk and Wagnalls Standard Handbook of Synonyms, Antonyms and Prepositions, 1947 Edition, by James C. Ferwald L.H.D. In that book, the principal word dealt with is 'emblem' and the word 'symbol' is given as one of the synonyms. In order to distinguish between the two the following explanation is given.

'Emblem is the English form of emblem; a Latin word of Greek origin, signifying a figure beaten out on a metallic vessel by blows from within; also a figure inlaid in wood; stone, or other material as a copy of some natural object. The Greek word symbolon denoted a victor's wreath, a check; or any object that might be compared with, or found to correspond with another, whether there was or was not anything in the objects compared to suggest the comparison. Thus an emblem resembles, a symbol represents.'

An emblem has some natural fitness to suggest that for which it stands; a symbol has been chosen or agreed upon to suggest something also, with or without natural fitness.'

This explanation of the distinction between the words emblem' and 'symbol' would indicate that an emblem will always be a symbol. In the case of a symbol, it may represent or suggest something else with or without natural fitness.'

If it suggests some natural fitness, it may be an emblem. That is why in the book referred to above it has also been said that 'a symbol may be also an emblem; thus the elements of bread and wine in the Lord's Supper are both appropriate emblems and his own chosen symbols of suffering and death.' Then there is given an example where some thing is a symbol and not an emblem. It is said; 'A statement of doctrine is often called a symbol of faith; but it is not an emblem.

8. Normally, a photograph or a portrait only represents the person of whom it is a photograph or a portrait. A photograph or portrait may therefore, within the meaning applicable in some cases though not always, be a symbol of the person whose photograph or portrait it is. It appears to us that, in considering the main question whether the portrait of Mahatma Gandhi is a national symbol or not, the meaning of the word 'symbol', which can appropriately be applied, is only that under which it must appear that this portrait represents some thing national by some natural fitness, and then it would also be an emblem.

If there is no fitness at all between what the portrait actually is and what it represents, it would be very difficult to hold that it is a national symbol. It was in the light of this meaning of the word 'symbol' that we questioned learned counsel for the appellant and tried to elicit from him what this portrait of Mahatma Gandhi could represent. The only suggestion that could be put forward before us, was that this portrait represented the Indian Nation and, consequently it was a national symbol. It was not suggested that the portrait should be treated as a national symbol because it represents Mahatma Gandhi himself.

Some thing, which represented Mahatma Gandhi himself, could not be contended to be a national symbol by learned counsel for the appellant, because it cannot be said that by merely representing Mahatma Gandhi a symbol would become a national symbol. But the argument that it represented the Indian Nation cannot also be accepted. We have failed to understand how it can be held that a portrait of Mahatma Gandhi at all represents the Indian Nation. That portrait is not typical of the Indian Nation and, if any portrait of Mahatma Gandhi were ever to be recognised as representing the Indian Nation, it would be a particular portrait and not all his portraits.

It cannot be held that every single portrait of Mahatma Gandhi, whatever his posture in it, would represent the Indian Nation. In this connection, it is important to note that the Act itself gives an example of one of the national symbols about which full details are known. That symbol is the national flag. The national flag is recognised as national symbol and, wherever it is flown, it connotes the idea of the presence or representation of the Indian Nation. This is a principle well recognised

in international relations.

The national flag is thus a national symbol because, wherever it exists, it at once gives an idea that, in some form or the other, the Indian Nation is also present or represented there. The same cannot be said with regard to a portrait of Mahatma Gandhi. People may keep his portrait because they revere him or have a great regard for him and treat him as the father of the Nation who alone brought independence of this country. By keeping his portrait, however, it cannot be said that there is any intention to signify that the Indian Nation as such is present or represented where that portrait happens to be. It appears to us, therefore, that it is not possible to hold that a portrait of Mahatma Gandhi is a national symbol in the sense that it represents the Indian Nation which was the only suggestion which could be put forward before us during the course of arguments when this point was considered by us.

9. There is also another significant aspect which needs to be examined. The question is as to how a symbol becomes a national symbol. Learned counsel for the parties, when called upon to address us on this point, could only draw our attention to the proceedings of the Constituent Assembly which, by a resolution dated the 22nd of July, 1949, adopted the national flag. The national flag became a national symbol by a resolution of the Constituent Assembly which had the supreme power to lay down the Constitution of India. Apart from this means, no other means has been brought to our notice.

We could envisage four other possibilities by which a symbol may become a national symbol. They are (1) by law passed by the Parliament, (2) a declaration by the Government of India either, under the powers granted by law or in exercise of their executive powers, (3) by international recognition and (4) by recognition by the nation as a whole, the recognition being either express or implied. No law of the Parliament has been brought to our notice under which any symbol has been given to the Government of India to declare a symbol as a national symbol. The only law, which was brought to our notice, was the Emblems and Names (Prevention of Improper Use) Act, 1950, (Act XII of 1950).

That Act does define the word 'emblem' and also lays down what the various emblems are. One of the emblems is the Indian National Flag. It however, appears that there is no provision in that Act declaring any emblem as a national emblem and the word 'national' is used only when referring to the Indian National Flag and not when referring to other emblems. It is also to be noticed that, in the schedule to that Act, as originally passed by the Parliament, not only the Indian National Flag and the official seal or emblem of Government of India or any other insignia or coat-of-arms used by Government of India, were included in the word emblem, but there were also included in the word 'emblem' an official seal or emblem of any State or any other insignia or coat-of-arms used by any such State or by any Department of any such State.

In addition, the name, emblem or official seal of the World Health Organisation were also included in the word 'emblem' and so were the name emblem or official seal of the United Nations Organisation. Clearly, all these emblems cannot be held to be national emblem of India. The emblem or the official seal of the United Nations organisation can never be held to be a national symbol or national emblem of a particular country. In these circumstances. we consider that no assistance can be taken in interpreting the words 'symbol' and 'emblem', used in the Act, by referring to the Emblems and Names (Prevention of Improper Use) Act, 1950.

(9a) The next question is whether a symbol can become a national Symbol when a declaration is made by the Central Government in exercise of its executive powers. It is very difficult to accept the contention that a symbol can become a national symbol by a mere declaration by a Government but it seems to us that we need not answer this point in the present case because there is no suggestion at all that any such declaration was ever issued. Very similar is the question whether a symbol can become a national symbol by international recognition or by express recognition by the nation as a whole, because there is no suggestion that in the case of portrait of Mahatma Gandhi there has been any international recognition or any express recognition by the Indian Nation that this portrait is to be a national symbol.

Reliance, in these circumstances, was placed only on the possibility that a symbol may become a national symbol if it is impliedly recognised as such by the nation. It seems to us that there are two reasons why this argument should not be accepted. The first is that there is no evidence at all and there is no reason to raise a presumption that the portrait of Mahatma Gandhi is impliedly accepted as a national Symbol by the Indian Nation as a whole. It is true, as mentioned by an Election Tribunal in the case of *Desai Basawaraj v. Dasankop Hasansab* 4 E. L. R. 380 that the birthday of Mahatma Gandhi is observed as a national holiday or a public holiday under the Negotiable Instruments Act and the picture of Mahatma Gandhi is hung in all the Government offices at Government cost, but we do not think that these acts can convert the portrait of Mahatma Gandhi into a national symbol.

The reason why the birthday of Mahatma Gandhi is observed as a public holiday under the Negotiable Instruments Act is clear. It is Mahatma Gandhi who is accepted as the founder of the independence of this country and, consequently, his memory is commemorated by celebration of his birthday. This fact, however, docs not mean that his portrait has been recognised impliedly as a national symbol. So far as the fact that his portrait is hung in all Government Offices at Government cost is concerned, clearly this is done under the instructions issued by the Government in exercise of its administrative powers. The fact that the Government, which has the right of regulating what is to be done in its offices, issues a direction that the portrait of Mahatma Gandhi should be hung in all public offices can also not convert that portrait into a national symbol and cannot be held to be evidence of the fact that the portrait is recognised as a national symbol by the nation as a whole.

Such administrative orders issued at the discretion of a Government can be varied from time to time. Under the Constitution, the Government is carried on in accordance with the Policy of the majority party in the Parliament. It would, therefore, depend on the views of the majority party whether the portrait of Mahatma Gandhi should continue to be hung in Government offices or not. At best, therefore, the fact that the portrait is hung in Government offices at present indicates that the present party Government attaches some sanctity or value to the

portrait of Mahatma Gandhi & desires that it should be hung in every Government office. May be that this practice may always be continued because it was through the guidance of Mahatma Gandhi that India achieved independence. These circumstances cannot, in our opinion, however, lead to an inference that the Indian Nation as a whole has accepted or recognised that Mahatma Gandhi's portrait is a national symbol.

10. It also appears to us that in the case of the provision made in Section 123(3) of the Act, some significance must be attached to the use of the words 'such as' after the words, 'national symbols & before the words 'the national flag' and 'the national emblem; very frequently if the meaning of a particular word is sought to be enlarged after using that word, the Legislature uses the word 'including' and then mentions the persons or objects which are to be included within the meaning of the first word. In the present case, the Legislature did not use the word 'including' but instead used the expression 'such as'.

There is then the circumstance that another expression, which is very frequently used, is 'for example'. If the expression 'for example' was used in the present case, the inference would be that the expression 'national symbol' is not to be interpreted with reference to the words 'national flag' and national emblem; National flag and national emblem would then only be examples of national symbols and other national symbols may be quite different from these two symbols. The use of the expression 'such as' instead of 'including' or 'for example'; in our opinion, connotes an idea that only those national symbols should be taken into account which are like and similar to the national flag or the national emblem.

In order to be like or similar to the national Flag or the national emblem, a national symbol must possess the same characteristics which are possessed by the national flag or a national emblem and, therefore, must become a national symbol by a process similar to that by which the national flag became a national symbol. The national flag, as we have already indicated above, acquired its characteristic of being a national symbol by a resolution of the Constituent Assembly. So far, we have discovered no provision of any law or any resolution by a competent body declaring any emblem to be a national emblem. In the circumstances, it appears to

us that the portrait of Mahatma Gandhi could have been recognised as a national symbol if it had been declared as such by a resolution of the Constituent Assembly in the same manner in which the national flag was declared to be a national symbol. The only other example where there is recognition of a national character, that we are aware of, is in the case of the national anthem. The national anthem was also recognised by a resolution of the Constituent Assembly. In this country, therefore, so far, the character of being national has been acquired only by the national flag and the, national anthem and that was by resolutions of the Constituent Assembly.

The portrait of Mahatma Gandhi has nowhere received such recognition. In all these circumstances, we are led to the conclusion that the portrait of Mahatma Gandhi cannot be held to be a national symbol within the meaning of that expression used in Section 123(3) of the Act. The portrait of Mahatma Gandhi not being a national symbol, its use by the respondent did not constitute a corrupt practice and the Election Tribunal was, therefore, right in holding that the election of the respondent was not liable to be set aside on this ground.

11. We may next take up issues Nos. 8 and 9 together as between them they constitute only one single ground for setting aside the election of the respondent falling under Section 123(5) of the Act. These issues were framed on the basis of the allegations contained in paragraph 5 D of the election petition read with Annexure C. According to these allegations, the corrupt practice consisted in hiring of bullock carts by 14 persons named in the annexure at 10 different places for conveying the voters to the polling stations. In the course of arguments before us, Mr. S.C. Khare, learned counsel for the appellant, stated that, in support of this appeal, he would only rely on the allegation made with respect to the hiring of bullock carts by only one of the 14 persons named and at only one of the 10 places named. He thus confined his case to the commission of the corrupt practice by Chhabi Krishna alone and at Bhiraoti, The allegation was that Chhabi Krishna had hired these bullock carts at the instance and with the consent of the respondent.

To prove this charge of corrupt practice, the appellant relied on the evidence of Chhabi Krishna, Damodar, Parmata Samp, Din Bandhu and Parmeshwari. In addition to this oral evidence, reliance was placed on a document, marked Ext. 20; which purports to be a letter signed by the respondent and addressed to Chhabi Krishna witness.

(After discussion of evidence His Lordship concluded:) On the whole therefore, we are inclined to agree with the view taken by the Election Tribunal that the evidence given on behalf of the appellant on this point is not satisfactory and cannot, therefore, be acted upon, so that this issue is also found against appellant.

12. The next issue that was argued before us, was issue No. 10 divided into four parts, (a) to (d). These are as follows:

'10(a). Whether the respondent had omitted to enter into his accounts the various 11 items mentioned in annexure (D). Were the items incurred by or on behalf of the respondent; If so the effect of the omissions?

10(b). What is the effect of the respondent not having shown in his account the accounts relating to items Nos. 1, 2 and 3 of annexure (D) against the various Kiraya (hire) charges.

10 (c). Whether the respondent did not show the printing charges of 55,000 slips?

10 (d) Whether the accounts were not kept regularly from day to day and whether the accounts violated the provisions of Section 77, Representation of the People Act, if so, its effect?'

13. In dealing with these issues, we may first examine a preliminary point whether these issues at all raise a question of commission of a corrupt practice under Section 123(6) of the Act, as urged by learned counsel for the appellant. Under Section 123(6) of the Act, a corrupt practice consists in incurring or authorising of expenditure in contravention of Section 77 of the Act. Section 77 of the Act has three sub-sections. The first sub-section requires every candidate 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. Sub-section (2) lays down

what the account shall contain.

These two sub-sections thus merely require that correct and separate accounts be kept and give the contents of those accounts. They do not prescribe any limitation on the incurring or authorising of expenditure. All that is laid down by Sub-section (1) is that expenses which have been incurred or have been authorised are to be included in the accounts, Inclusion in the accounts is not a condition of incurring or authorising of an expenditure. The incurring or authorising of an expenditure is only limited by the provisions of Sub-section (3) of Section 77 which lay down that the said expenditure shall not exceed such amount as may be prescribed.

In the present case a joint statement was given by learned Counsel for the parties that the prescribed maximum was Rs. 9000/- so that the respondent was debarred from incurring or authorising expenditure in excess of Rs. 9,000/- It was only if he did incur or authorise expenditure in excess of this amount, that act would have been in contravention of Section 77(3) of the Act and would have constituted a corrupt practice. In the allegations, on the basis of which issue No. 10(a) to (d) was framed, there was no allegation that the expenditure incurred or authorised by the respondent was in excess of the prescribed limitation. The allegation only showed that certain expenses had been incurred though if those expenses were totalled up, no doubt, it would appear that the prescribed limit would be exceeded.

But the issue as framed, does not really deal with the question of commission of a corrupt practice covered by Section 123(6) of the Act. The issue, as framed, really amounts to raising questions about the non-compliance with the provisions of the Act and the rules framed thereunder which could be a ground for setting aside an election under Section 100(1)(d)(iv) of the Act, provided there was allegation and proof that the result of the election had been materially affected by that non-compliance. No attempt was made by learned counsel before us to urge that this issue should be construed as putting forward a ground under Section 100(1)(d)(iv) of the Act, obviously, because there was no evidence at all that the result of the election had been materially affected by non-compliance with the provisions of the Act and the rules in the manner brought out in this issue.

14. What learned counsel did was to argue this ground as one relating to the commission of a corrupt practice under Section 123(6) of the Act. We have already held above that no such allegations were made in plain language. For this reason itself, we think that this ground can be rejected but we have chosen to go into the further question whether the appellant did or did not succeed in proving that the expenditure incurred or authorised by the respondent had exceeded the amount prescribed under Section 77(3) of the Act. The items of expenditure alleged to have been incurred and not included in the accounts by the respondent are 11 in number, given in Annexure D, relating to paragraph 4-E of the election petition. Most of these amounts are very petty in nature.

The amount admitted by the respondent to have been incurred as expenses in the election was Rs. 2,520/- only. There was thus a margin of Rs. 6,480/- and, unless the appellant proved that expenses in connection with the election had been incurred or authorised by the respondent to the extent of an amount exceeding Rs. 6480/-, apart from those shown in his return, this ground for setting aside the election would fail. In respect of several items of expenditure shown in Annexure D, the amounts alleged to have been spent by the respondent is not indicated and learned counsel for the appellant admitted that there was no evidence on behalf of the appellant to prove the specific amounts spent.

(After discussion of evidence His Lordship proceeded): The evidence totally fails to show that the election expenses of the respondent were, in any way, in the neighbourhood of the maximum limit of Rs. 9,000/- so that the ground of commission of corrupt practice under Section 123(6) of the Act fails altogether.

15. Lastly, we shall deal with issue No. 13 which related to the commission of corrupt practice falling under Section 123(7) of the Act, the allegation being that the services of a large number of lekhapals had been procured by the respondent for the furtherance or the prospects of his candidature. Even though the original allegation was in respect of procuring of assistance of three lekhpals, Sishpal Singh Fateh Singh and Naurangi Lal, evidence before the Tribunal was given only in respect of two, viz., Shishpal Singh and Fateh Singh.

No evidence at all was given to show that the services of Naurangi Lal were ever utilised by the respondent. As regards Shishpal Singh's services, there is only one single witness Shishpal Singh himself. No witness has been produced to corroborate him. Shishpal Singh was no doubt a Lekhpal during the election period though his evidence indicated that by the time he came into the witness-box, he had probably ceased to be so. According to him, the respondent came to his village with his brother Ghanendra Singh on 26-2-'57; and left Ghanendra Singh there telling Shishpal Singh that he should have the parchis distributed.

Thereafter, according to Shishpal Singh, he went round with Ghanendra Singh pointing out houses where the parchis were to be delivered by Ghanendra Singh. He says that he, in this way, pointed out 15 or 18 houses. The evidence given by him of the assistance sought by the respondent is on the face of it absurd because there was no reason at all to ask the Lekhpal to assist by pointing out houses. Ghanendra Singh and the respondent himself may have gone to each house inquired the name of the owner or the resident of the house and given him his parchis.

There was no need of requisitioning the services of the Lekhpal for such a purpose. It appears that Shishpal was himself aware that, as a Government servant, he was not entitled to give assistance to a candidate in his election and, therefore, even when he came to support the case of the appellant, he admitted having taken a very minor part by pointing out houses to the respondent where parchis were to be distributed. The allegation of Shishpal that his services were utilised is disproved by the evidence of Jamna Singh respondent himself as well as by the evidence of his brother Ghanendra Singh.

In our opinion, their evidence is much more reliable than the evidence of this witness Shishpal Singh. Two other witnesses, Narain Dass and Parameswar have also been produced by the respondent to show that the distribution of parchis was not done by Ghanendra Singh but it was done by Tejpal Shastri, and Shishpal Lekhpal was not with him. In all these circumstances, the evidence of Shishpal Singh must be rejected as has been done by the Election Tribunal.

In the other case, three witnesses have been examined on behalf of the appellant and they are Fateh Singh Lekhpal himself, Lakhan and Manzoor. Fateh Singh's evidence is of the same unsatisfactory character as that of Shishpal Singh. He says that Jamna Singh and Sukh Lal, another brother of his, had asked him to point out houses as they were strangers in order to enable them to distribute parchis. Once again, there appears to be no reason why such assistance should have been sought from the Lekhpal.

As we have said earlier, these persons could have proceeded to each house and made inquiries at the house itself, or, in the alternative, they could have easily taken assistance from some other resident of the village. Surely, the respondent must have had at least one or two supporters in each village or, at least in neighbouring villages, from whom such assistance could have been taken instead of committing the foolish mistake of requisitioning the services of a Government servant like Fateh Singh. Lakhan admits that he was himself a worker of the appellant and, consequently, he is an unreliable witness.

Manzoor also admits that he was doing the work of the appellant and was actually distributing the appellant's parchis before the parchis of the respondent were distributed with the assistance of Fateh Singh. Both these witnesses pretend that they stopped supporting Karan Singh when they saw that the Lekhpal was assisting in the distribution of parchis of the respondent. Neither of them is, however, prepared to say that the Lekhpal ever said any thing in order to try to influence the voters. The excuse that they were influenced by the Lekhpal is, therefore incorrect.

It appears that they were supporters of the appellant and that they have come to give evidence on behalf of the appellant for that reason. The witnesses are thus not reliable and the nature of the assistance alleged to have been taken from the Lekhpal is itself such that it makes the allegation extremely doubtful. Jamna Singh respondent has, on oath, denied that he took any such assistance. One other witness examined in this connection was Tahir Husain Learned Counsel for the appellant had to concede in the course of arguments that Tahir Husain's evidence is not direct when he does not state that any thing was done by the Lekhpal in his

presence. In the circumstances this issue is also to be found against the appellant.

16. The result of the findings recorded by us above is that the appellant has failed to prove his case in respect of any of the grounds which would justify the declaration of the election of the respondent as void. The appeal fails and is dismissed with costs for the calculation of which we fix the fee of counsel for the respondent at Rs. 400/-.

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