Pyari Mohan Das Vs. Durga Sankar Das and anr.

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Court : Orissa

Decided On : Feb-03-1958

Reported in : AIR1958Ori125

Judge : R.L. Narasimham, C.J. and ;P.V.B. Rao, J.

Acts : Representation of the People Act, 1951 - Sections 7, 77(1), 77(3), 123, 123(1) and 123(6); Contract Act, 1872 - Sections 38; Representation of the People (Conduct of Elections and Election Petitions) Rules, 1950 - Rule 131

Appeal No. : Misc. Appeal No. 185 of 1957

Appellant : Pyari Mohan Das

Respondent : Durga Sankar Das and anr.

Advocate for Def. : G. Rath, Adv.

Advocate for Pet/Ap. : Asok Das, Adv.

Disposition : Appeal dismissed

Judgement :

P.V.B. Rao, J.

1. This is an appeal under Section 116A of the Representation of the People Act, 1951 against the order of the Election Tribunal (Additional District Judge.

Balasore) dismissing the petition of the appellant praying for setting aside the election to the Orissa Legislative Assembly of respondent No. 1 Sri Durga Sankar Das.

2. Respondent No. 1 belongs to Taladi. He was elected to the Orissa Legislative Assembly from the Bhograi Constituency in the election held in 1957. The appellant-petitioner and respondent No. 2 were the two defeated candidates in that election.

3. The appellant filed a petition under Section 80 of the Representation of the People Act 1951 alleging that respondent No. 1 (hereinafter railed the respondent) had been working as the Assistant Public Relations Officer under the State of Orissa and though the latter alleged to have submitted his resignation the same had not been accepted by the authorities and as such he is a person holding an office of profit on the day fixed for tiling nomination papers; that as an Assistant District Public Relations Officer he had been taking money from the Government to do work for the Government and the accounts thereof had not been finalised and some money was still owing to the Government; that he undertook the execution of the work of tube-wells in the year 1952-53 by a contract entered into with the Government of Orissa which was subsisting till the date of nomination and as such disqualified for being chosen as a member of the Orissa Legislative Assembly not only under Article 191 of the Constitution, but also under Section 7, Sub-section (d) of the Representation of the People Act (hereinafter called the Act.)

The petitioner also alleged that the respondent contravened the provisions of Section 77 of the Act and that the respondent had paid gratification by way of money to several electors to vote for him and to induce other voters of the constituency tq vote for him; and consequently his election was void.

4. The respondent in his written statement denied all the allegations. He pleaded that he was holding a temporary post of Assistant District Public Relations Officer which he had re-signed since 10th January, 1956; and that his resignation was duly accepted by the appropriate authority and another person was appointed in his place long before he was nominated as a candidate for the election.

He also stated that he ceased to take any money from the Government long before the filing of the nomination paper and even if any money remained payable to the Government, the accounts not having been finalised as yet that cannot be regarded as an undertaking of any sevice to be performed for the Government: that he had not undertaken any contract for execution of any work for the Government of Orissa; that the tube-well contracts were taken under the district development scheme of the Revenue Department of the Government of Orissa and under the said scheme the Government bore two-thirds of the costs, the rest being borne by the villagers; that he had undertaken the work on behalf of and as the representative of the villagers and as such, the execution of those works did not come under the provisions of Section 7(d) of the Ant; and that also the said works were completed long before and final payment obtained by him on the orders of the Sub-Divisional Officer Balasore dated 7-7-55 and as such from that date the contracts did not subsist.

He also averred that he had not incurred or authorised expenses in violation of Section 77 of the Act; that he had never paid any voter to vote for him or to induce others to vote for him; and that he and his agents were not guilty of any of the acts alleged against them and the petition was liable to be dismissed.

5. The learned Tribunal held that the respondent was not a holder of an office of profit under the State of Orissa on the date of filing of his nomination paper; that the advance of Rs. 60/- taken by the respondent when he was in service towards travelling allowances to go to Berhampur to attend the exhibition could not be regarded as an undertaking of service to be performed for the State Government and even if it amounted to an undertaking of service, it had long ago been performed and for the amount, if any, outstanding against him he was simply in the relation of a debtor and there was no subsisting account to be settled and consequently this transaction did not disqualify the respondent from being chosen as a candidate under Section 7 of the Act; that the contracts for the execution of the tube-well taken by the respondent in the year 1952-53 were not subsisting by the date of the nomination; that the contracts entered into fay the respondent regarding the tube-wells did not come under Section 7(d) of the Act, that the respondent did not violate the provisions of Section 77 of the Act; that the

respondent was not guilty of bribery and inducement to the persons mentioned in the list appended to the petition; and that the petitioner was not entitled to any relief.

6. The learned counsel for the appellant, Mr. Asok Das, contends that the order of the Tribunal is wrong on all the points raised by the appellant; that at the time of the nomination the respondent was holding an office of profit; that the respondent was having a subsisting contract with the State Government not only for the construction of tube-wells, but also with regard to the amount drawn as travelling allowances; that he did not maintain the election accounts as enjoined by Section 77 of the Act; and that the respondent was guilty of corrupt practice in bribing the agents to induce the electors to vote for him.

7. With regard to the contention that the respondent was holding an office of profit on the date of nomination that is 29-1-57, the only point to be considered is whether at the relevant time, that is, at the time of nomination he was still holding an office of profit or he resigned the said post before the date of nomination.

(His Lordship considered the evidence on the point and proceeded).

On a consideration of the evidence I am of opinion that the resignation was submitted on 10-1-56; and that the file was put up on 15-2-56 and the resignation was accepted on 17-2-56. The respondent consequently is not a holder of an office of profit at the relevant date.

8. With regard to the next contention that there is a subsisting contract with regard to an amount of advance taken by the respondent from the Government when he was in service, admittedly on 4-5-56 the respondent took an advance of Rs. 60/- towards travelling allowance for attending the State Exhibition at Berhampur and he had submitted a T.A. bill for Rs. 31/- and odd and as such a balance of Rs. 28/- and odd was recoverable from him. No steps could be taken in this direction before his resignation and relief as the bill had to be sent for preliminary audit to the Accountant General, the same having been submitted after a lapse of six months.

The bill appears to have been received back from the Accountant General's office only in July 1957 and from the evidence of P. W. 1 it is clear that the Government auditors raised objections to such items of unrecovered advances from all the Assistant Public Relations Officers. The learned Tribunal came to the conclusion that on these facts it cannot be said that this payment of Rs. 60/- towards advance travelling allowance and the respondent going to Berham-pur to attend the State Exhibition and to assist the local authorities there could be regarded as an undertaking of service to be performed for the State Government and even if it amounted to an undertaking of service, it had long ago been performed and for the amount, if any, outstanding against him, the respondent was in the relation of a debtor and that there was nothing like an account between him and the Government which had yet to be settled.

The learned counsel Mr. Asok Das vehemently contended that as long as there was a liability on the part of the respondent to pay the balance there is a subsisting contract between him and the Government though it is an implied contract and that in holding the State Exhibition the State had undertaken a service and that the respondent had a subsisting contract with regard to the service undertaken by the State.

9. I will take up for consideration also the other point urged by the learned counsel as it is connected with the above as far as the question of existence of a subsisting contract or otherwise is concerned. With regard to this, the contention of the learned counsel is that the respondent entered into three contracts with the State Government under the tube-well drinking water supply scheme for laying tube-wells in his own village Taladi and two other neighbouring villages of his constituency Kakhada and Mandari.

Though the respondent contended that the said works had long before been completed and final payments obtained by him under the orders of the Sub-Divisional Officer, Balasore and as such the contracts were not subsisting by the date of his nomination, the learned counsel for the appellant denied the fact that those works had been completed and contended that there was still a balance left for payment to the respondent at the date of the nomination under each of the

three contracts and consequently there were subsisting contracts at the relevant date. It may be stated here that it is not contended by the respondent and in my opinion rightly that the transactions entered into between the respondent and the Sub-Divisional Officer are not contracts.

10. With regard to these two matters, the first contention of the learned counsel for the appellant is that on account of the existence of a liability to refund on the part of the respondent the balance of the travelling allowance andon account of the liability of the Sub-DivisionalOfficer to pay -some amounts to the respondent, the contracts are subsisting contracts at the time of nomination. In support of his contention, the learned counsel relies upon three decisions of the Supreme Court and a decision of the Bombay High Court in the cases of Shivnandan Sharma v. Punjab National Bank Ltd., (S) AIR 1955 SC 404 (A), N. Satyanathan v. K. Subramanyan (S) AIR 1955 SC 459 (B), Chaturbhuj Vithal-das v. Moreshwar Parashram AIR 1954 SC 236 (C), and Phoenix Mills Ltd. v. M. H. Dinshaw and Co., AIR 1946 Bom 469 (D). In the case of (S) AIR 1955 SC 459 (B), the Supreme Court held,

'It cannot be gainsaid that the Government in the Postal Department is rendering a very useful service. Where therefore, a permit-holder of a motor bus enters into a contract with the Government in the Postal Department to carry mail bags and postal articles, which is based on mutual promises -- by the permit-holder to carry the mail bags, etc. and by the Postal Department to pay him suitable remuneration for the services thus rendered -- It is a straightforward illustration of the kind of contract contemplated by Section 7(d) of the Act. On the face of the transaction such an agreement is between two competent parties with their free consent snd for lawful consideration'.

The Supreme Court also held,

'Section 7 is intended to ensure that there is no occasion for a conflict between public duty and private interests.'

In my opinion, this case does not in any way support the contention of the learned counsel. Clearly there is a subsisting contract for performance by both sides at the

date of the nomination in that case. In the case before us, it is not so. In the case of travelling allowance, the performance on both sides was complete and only a balance remained to be paid by the respondent to the Government. In the other instances the works were completed and the Sub-Divisional Officer, the competent authority and the promise under the contracts ordered final payments of the balance amounts due to the respondent. As far as the contracts are concerned, the performance is completed on both sides and consequently, in my opinion, it cannot be said that in either case there is a subsisting contract coming under Section 7(d) of the Act.

11. In the next case relied upon in (S) AIR 1955 SC 404 (A), the Supreme Court laid down the law as far as it is relevant to this case only with regard to the meaning of master, servant and independent contractor. It held,

'A master is one who not only prescribes to the workman the end of this work, but directs or at any moment may direct the means also, or, as it has been put, 'retains the power of controlling the work'; a servant is a person subject to the command of his master as to the manner in which he shall do his work. An independent contrsctor is one who undertakes to produce a given result but so that in the actual execution of the work he is not under the order or control of the person for whom he does it and may use his own discretion in things not specified before-hand.'

In my opinion, this decision has no application to the questions under consideration.

12. In the case of AIR 1954 SC 236 (C), it was held by the Supreme Court,

'As soon as an order was placed and accepted, a contract arose. It is true this contract would be governed by the terms set out in the letters but until an order was placed and accepted there was no contract.'

It was also held,

'A contract for the supply of goods does not terminate when the goods are supplied. It continues in being till it is fully discharged by performance on both sides. It cannot be said that the moment a contract is fully executed on one side

and all that remains is to receive payment from the other, then the contract terminates and a new relationship of debtor and creditor takes its place. There is always a possibility of the liability being disputed before actual payment is made and the vendor may have to bring an action to establish his claim to payment. The existence of the debt depends on the contract and cannot be established without showing that payment was a term of the contract. It is true the contractor might abandon the contract and sue on 'quantum meruit' but if the other side contested and relied on the terms of the contract, the decision would have to rest on that basis.'

On the authority of this decision of the Supreme Court, the learned counsel Mr. Asok Das strenuously contended that in this case as there is still a liability on the part of the respondent to make good the balance to the Government in one case and the right on the part of the respondent to claim the balance of money due in the other, the contracts are still subsisting and therefore his nomination ought to have been rejected under Section 7(d) of the Act. In the case before us, the facts are quite different as I will show presently and do not come under the decision of the Supreme Court. The decision in the case of AIR 1946 Bom 469 (D) has no application to the facts of this case.

13. The contracts entered into with regard to the tube-wells are all in the following words.

'Sadar Sub-Divisional Officer or his successor or his representative ..... First Party

and

Durga Das or his heirs or successors in interest.....Second Party.

Since the second party has applied for the definite sum of Rs. 335/- this has been properly sanctioned for the pecuniary help for the purpose of the drinking water scheme & since the first party has agreed to give help of the definite sum of Rs. 250/- to the second party, the following agreement is entered upon as between the parties.

'1. The first party shall advance a sum of Rs. 100/- as soon as the scheme is sanctioned;

'2. The second party shall apply the sum s' advanced to work out the scheme. The second party shall submit the bill proportionate to the work executed (along with the certificate of the Gazetted Officer in charge of the work for the adjustment of the said advance);

'3. The total amount of bills shall be adjusted towards the advances paid;

'4. After the advances paid are so adjusted towards the bills submitted the first party shall advance further sums on the account towards the work. But the amount so advanced shall not exceed the total amount that has been agreed to be paid;

'5. In case the second party does not begin the work at the proper time, or after he begins the work he does not properly manage it or if the work is not finished to the satisfaction of the Officer in charge, the second party shall be bound to return the entire advance money paid along with interest at 6/1/4 per cent from the date of payment;

'6. The amount that is liable to be paid in accordance with the previous clause shall be recoverable as a public demand;

'7. This agreement shall be registered in accordance with the consent of both the parties and this document shall bear the signature of both the parties, the year and the date.' On the strength of the terms in this agreement which are practically the same in the other two cases, Mr. Asok Das contends that the term in the contract that in case the work is not finished to the satisfaction of the Officer in charge, the second party shall be bound to return the entire advance money paid along with interest clearly shows that even though the performance is complete on both sides, till the certificate of completion of the work is obtained, the contract subsists as also on the ground that till the entire money is paid, the contract is not discharged, But the further evidence in this case accepted by the learned Tribunal goes to show that the contract is put an end to finally and does not subsist.

The contentions of the appellant that the respondent did not construct any platform till the date of nomination; that no officer had visited the spot to enquire about the completion of the work; and that he reported the matter to the Sub-Divisional Officer verbally but the latter did not take any action were not accepted by the learned Tribunal as they were not supported by any evidence or by any contemporaneous complaint made to respective authorities except that of the petitioner himself and the learned Tribunal was of the opinion that it is difficult to place any reliance on the bare testimony of the petitioner. The files relating to these contracts disclose that the works had been completed and final payments had been ordered. The last portion of Ext. 3-1 the order-sheet relating to the contract of Kakhra is to this effect,

'Sri Durga Das Agent is present and says that he has completed the work of the project. So he may be paid the balance of Rs. 20/-. Pay him Rs. 20/- (twenty only) as final payment and ask E. O. to get measurement by 30-7-55.'

Sd/ M. S. Nath

S. D. O.

7-7-55.'

The last portion of Ext. 4-1, the order-sheet relating to the contract of Mandari is to this effect,

''Sri Durga Das Agent is present and says that he has completed the work of the project. So he may be paid the balance amount of Rs. 10/-.

Pay him Rs. 10/- (ten only) as final-payment. Ask E. O. to get measurement by 30-7-55.

Sd/- M. S. Nath.

S. D. O.,

Sadar,

7-7-55'

The last portion of Ext. 5-1, the order-sheet relating to the contract of Taladi is also to the effect.

'Sri Durga Das Agent is present and says that he has completed the work of the project. So he may be paid the balance of Rs. 10/-.

Pay him Rs. 10/- (ten only) as final payment and ask E. O. to get measurement by 30-7-55.

Sd/-M. S. Nath

S. D. O.

7-7-55.'

The order-sheets in these three agreements, therefore, clearly show that the first party ordered payment of the balance amounts due as final payment. Mr. Asok Das contends that these three order-sheets show that the Sub-Divisional Officer asked E.O. to get measurement by 30-7-55 and consequently till the final measurements are made and certificate of completion is furnished the contract cannot be deemed to be discharged. I cannot accept this contention. When the Sub-Divisional Officer has ordered a final payment it is clear that he accepted the work as satisfactory and put an end to the contract. It may be, he ought to have ordered final payment after the completion certificates are obtained.

But when once he orders a final, payment, it cannot by any stretch of imagination be contended that the contract is still subsisting. The order for final payment is an irrevocable one and puts an end to the contract and nothing yet remains to be done by both sides on the contracts. Mr. Asok Das next contended that these three order-sheets show that some balance remained outstanding and was not paid on 7-7-55 and therefore inasmuch as if the Government did not pay the balance amount ordered to be paid by the Sub-Divisional Officer as final payment the respondent would be obliged to file a suit to recover the same in which case it may be necessary to refer to the contract and therefore the contract must be

deemed to be subsisting in accordance with the decision of the Supreme Court in N. Satyanathan's case (B). I cannot accept this contention also and in my opinion this contention is not tenable. When once the Sub-Divisional Officer ordered final payment on 7-7-55, it follows that it is no longer necessary to refer to the contract in case a suit is filed to recover the amount. That suit can easily be filed on the order of the final payment which is the cause of action for such a suit and not the original contract. The position of the respondent from 7-7-55 is only that of a creditor and that of the Sub-Divisional Officer a debtor and the suit would be a suit to recover a debt and not a suit on the contract. Further according to the law of contract, the performance is said to be complete when there is a legal tender on the part of the promisee. It may sometimes happen that a person who is to perform a promise has been ready and willing to perform and has also offered to perform his promise at the proper time and proper place.

In such a case, the contract is discharged. It is so discharged even in the case of a wrongful refusal to accept the performance. A valid tender satisfies all the requirements of performance. No doubt if the tender consists in a promise to pay money, then the promisor must go to the creditor, the law being that the debtor must find out the creditor and offer the whole amount to him in such a way, that the creditor might take the whole amount due to him even without the necessity for giving change as was the rule in the olden days. There must be either an actual offer of the money by one parts or a dispensation of such offer by the other. But a mode of payment is also determined by the previous conduct of the parties.

In the present case, the balance money dUe was ordered by the Sub-Divisional Officer, the first party to the contract, as final payment. The second party who performed his part of the contract was present at the time the order was made. The mode of payment in this case is by the Sub-Divisional Officer ordering the payment as final payment and afterwards it is only as a matter of course the payee takes the amount from the concerned assistant. When the order of final payment is made, the Sub-Divisional Officer cannot go back upon the same and question that the work was not satisfactory so as to bring the penal clause in the contract into force. Therefore, I am of opinion that there is no subsisting contract as comtemplated in Section 7(d) of the Act and the nomination is not invalid on that

ground,

14. With regard to the advance of travelling allowance drawn by the respondent to go to Berhampur to attend the State Exhibition, the learned counsel contends that as the payment of the balance was not made by the respondent, the implied contract to return the same is deemed to subsist. A balance of Rs. 28/- and odd admittedly remained unspent. Mr. Asok Das contends that the Exhibition held at Berhampur is a service undertaken by the Government and in taking the advance payment of Rs. 60/- as travelling allowance to go to Berhampur the respondent entered into an implied contract with the Government to spend that money in the performance of service to attend the exhibition and if any balance remains unpaid on that account, there is a subsisting contract at the date of the nomination.

As such the learned counsel submits that the case is governed by Section 7(d) of the Act. I am not inclined to accept the general statement that if the Government holds an exhibition at Berhampur, it is a service undertaken by the Government though the copies of the budget filed before us show that these are services. In the first supplementary Statement of Expenditure for the year 1955-56, at page 126, it is stated,

'In connection with the holding of the State Exhibition at Berhampur in May 1955 at the time of the meeting of the All India Congress Committee, the expenditure is on a new service. An advance of Rs. 50,000 was sanctioned from, the contingency Fund in G.O. No. 19074-F dated 9-8-1955 as there was no provision in the budgets of the following Departments for participating in any exhibition.'

An amount of Rs. 50,000 was demanded for the same. Mr. Asok Das relying upon the expression 'the expenditure is on a new service' says that the holding of the exhibition was a service undertaken by the Government. I cannot re-concile myself to hold that the holding of an exhibition in connection with Public Relations is such a service undertaken by Government as is contemplated under Section 7(d). The next question is, can the respondent as an Assistant Public Relations Officer going to attend the exhibition on the orders of the Government after drawing travelling allowance of Rs. 60/- as ordered amount to a contract and can it be said to be subsisting for the unspent amount remaining unpaid so as to be covered by

Section 7(d) of the Act? The respondent was a servant of the Government and on the orders of the Government he went to attend the exhibition. The contract of the respondent with the Government was a contract of service as master and servant. During the course of that employment in the course of official business he drew an amount of Rs. 60/-.

No doubt, the unspent balance must be returned and it may amount to an implied contract at the time of drawing of the advance, but I do not think certain ancillary and secondary implied contracts arising out of the usual course of business as a public servant can be deemed to be a contract of service by the respondent in the service undertaken by the Government. In the case cited by Mr. Asok Das in (S) AIR 1955 SC 404 (A), their Lordships laid down the relationship of master and servant, meaning of master, servant and an independent contractor. It was held,

'A master is one who not only prescribes to the workman the end of his work, but directs or at any moment may direct the means also, or, as it has been put, 'retains the power of controlling the work'; a servant is a person subject to the command of his master as to the manner in which he shall do his work'.

In the case of In re, T. Sidhalingappa, 7 Ele LR 416 (E), it was held by the Chief Election Commissioner,

'The expression 'contract for the performance of any services' in Section 7(d) of the Representation of the People Act, 1951, means a contract directly for the performance of any service itself and does not include contracts which are only ancillary to or for purposes connected with the performance of any such service.'

I agree with the above view of the Chief Election commissioner. Under these circumstances, I am of opinion that even though there is an implied contract at the time of drawing the advance to refund the balance, such a contract cannot be deemed to be a contract falling and contemplated under Section 7(d) of the Act.

15. The next contention of the learned counsel for the appellant is that the respondent did not maintain the accounts as required fay Section 77 of the Act. Section 77 is as follows:

'77. 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 authorised by him or by his election agent between the date of publication of the notification calling the election and the date of declaration of the result thereof, both dates inclusive.

(2) The account shall contain such particulars, as may be prescribed.

(3) The total of the said expenditure shall not exceed such amount as may be prescribed.'

The particulars are prescribed by Rule 131 of the Representation of the People (Conduct of Elections and Election Petitions) Rules. Rule 131 is as follows:--

'131. Particulars of account of election expenses, :

(1) The account of election expenses to be kept by a candidate or his election agent under Section 77 shall contain the following particulars in respect of each item of expenditure from day to day, namely:--

(a) The date on which the expenditure was incurred or authorised;

(b) the nature of the expenditure (as for example, travelling, postage or printing and the like);

(c) the amount of the expenditure--(i) the amount paid; (ii) the amount outstanding;

(d) the date of payment:

(e) the name and address of the payee;

(f) the serial number of vouchers, in case of amount paid;

(g) the serial number of bills, if any, in case of amount outstanding;

(h) the name and address of the person to whom the amount outstanding is payable.

'(2) A voucher shall be obtained for every item of expenditure unless from the nature of the case, such as postage, travel by rail and the like, it is not practicable to obtain a voucher.

'(3) All vouchers shall be lodged along with the account of election expenses, arranged according to the date of payment and serially numbered by the candidate or his election agent and such serial numbers shall be entered in the account under item (f) of Sub-rule (1).

'(4) It shall not be necessary to give the particulars mentioned in item (e) of Sub-rule (1) in regard to items of expenditure for which vouchers have not been obtained under Sub-rule (2).'

Mr. Asok Das contends that the respondent did not maintain the accounts as can be seen from the account of his election expenses lodged by the respondent under Section 78 of the Act as re-quired by Section 77 and the prescribed rule there-under. His case is not that the total amount spent by the respondent on account of the elec-tion expenditure exceeded the amount prescrib-ed but that the manner in which the accounts were maintained is contrary to the provisions of Section 77 and Rule 131 prescribed thereunder. He wants to construe that the sentence

'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 autho-rized by him or by his election agent'

means that it is obligatory to maintain two separate accounts -- one being the account of all expenditure incurred and the other being an account of all expenditure authorised by him or by his election agent and submits that inas-much as the accounts lodged by the respondent do not show separately the said items, the res-pondent contravened the provisions of Section 77. He ralies for this construction of the sentence re-ferred to above of Rule 131, Clause 1(a) 'the date

on which the expenditure was incurred or athorised.'

Mr. Rath for the respondent submitted that the expression 'keep a separate and correct ac-count of all expenditure in connection with the election incurred or authorised by him or by his election agent', means only that the account maintained should be separate from that of his other account personal or professional, Mr. Das also contends that the expenses shown in the return of election expenses did not give full particulars in respect of each item of expenditure from day to day and that on the face of it the account appears to have been prepared for the purpose of election returns. He also submits that the accounts do not show the dates on which the agents whom he authorised to spend actually spent the amount.

The accounts only show the dates on which the agents were paid by the candidate all the suspenses incurred by them. Before the amend-ment of 1956, Section 77 provided only the scale of maximum election expenses by saying that tbe maximum scales of election expenses at elections and the numbers and descriptions of per-sons who may be employed for payment in con-nection with elections shall be such as may be prescribed. On these submissions, the learned counsel contends that the respondent is guilty of a corrupt practice coming under Section 123, Clause (6) of the Act and as such the election of the res-pendent is void. Section 123 runs as follows:--

'123. Corrupt practices. -- The followingshall be deemed to be corrupt practices for thepurposes of this Act:--

X X X X X

(6) The incurring or authorising of expenditure in contravention of Section 77.

XXX XX'

Beyond alleging that the respondent had incur-red and authorised expenses in contravention ofSection 77 of the Act the appellant neither in his petition nor in his evidence has been able to state in what respect the accounts contravened Section 77 or the rules thereunder. The learned Tribunal was of opinion that on this ground

alone the issue might have to be decided against him. It was only at the time of argument before the learned Tribunal that the appellant from an examination of the return of election expenses and the evidence of the respondent contended that the expenses shown therein did not give full particulars in respect of each item of expenditure from day to day and that on the face of it they appeared to have been prepared for the purpose of election return.

The accounts do not show the day to day expenditure made by the workers, but the accounts do show that they were maintained from day to day in the sense that the date on which the amounts were actually paid to the workers were mentioned in the regular course of business. The respondent stated in his evidence that his workers kept details of expenses and they furnished them and that he did not think it necessary to burden the return with those bulky accounts.

It is also common sense that the candidate who is to maintain the accounts cannot be expected to maintain an account of expenditure made by his worker at a different place from day to day. He can only enter the same in the accounts only on the day on which he pays the worker for the expenses incurred. In that view of the matter, the accounts are maintained from day to day. Sub-clause (2) of Section 77 merely mentions that the account shall contain such particulars as may be prescribed. The relevant rule prescribed is Rule 131 as already stated and under that rule the particulars required are that each item of expenditure from day to day must be maintained showing the date on which the expenditure was incurred or authorised.

Heading this clause along with Clauses (g) and (h) of Rule 131 which required the serial number of bills, if any, in case of amount outstanding and the name and address of the person to whom the amount outstanding is payable, I am of the view that the candidate should show the date on which the expenditure was incurred which is the date on which he spent the amount himself or paid it to a worker on submission of a bill to him of the amount spent by the worker and the expression 'the date on which the expenditure was authorized' refers only to the items authorised, but not paid and which are outstanding under Clauses (g) and (h) of Rule 131.

The accounts lodged by the respondent to this case are maintained from day to day all being expenses incurred either by himself or by payment to the workers on submission of their vouchers or bills. In my view, the return of expenses submitted by the respondent is in accordance with Section 77 and Rule 131 made thereunder. I am of opinion, therefore, that there is no contravention of Section 77 as far as the manner of maintaining the accounts is concerned. The accounts were submitted by the respondent on some printed forms supplied to the candidate. The form provides two columns (a) and (d) for maintaining the dates of incurring the expenditure and the dates of payment.

These columns were duly filled up. The respondent gave evidence that the workers engaged by him for various purposes spent monies from their pockets for their fooding and travelling expenses from day to day and that he made the payment subsequently after they rendered accounts and that he did not think it necessary to get from them detailed vouchers of their day to day expenditure. In my opinion, his explanation appears to be a reasonable one. I have already mentioned that the appellant did not give any particulars in his petition except stating that the accounts were not maintained according to Section 77. He wanted merely to make out a contravention of Section 77 in the return submitted by the respondent.

Mr. Asok Das also did not persist further in his contention that there was a contravention of Section 77 of the Act so as to make the election void. It was contended by Mr. Rath, the learned counsel for the respondent that Section 123, Clause (6) which says that the incurring or authorising of expenditure in contravention of Section 77 is a corrupt practice applies only to the case where the expenditure incurred or authorised, exceeded the maximum prescribed under Section 77 and the rule made thereunder of the total of the election expenditure.

In my view, the learned Tribunal was right in saying that as neither in his petition nor in his evidence the appellant was able to state in what respect the accounts contravened Section 77 was enough to hold against him on this point. I therefore hold that there is no contravention of Section 77 by the respondent so as to make the election void in this case.

16. The next contention strenuously urged by Mr. Asok Das is that the respondent is guilty of the corrupt practice of bribery by giving gratification to persons with the object, directly or indirectly of inducing the electors to vote for him, under Section 123, Clause (1) and consequently the election is void. The appellant's case is, as already stated, that the respondent had paid money by way of gratification to several workers who were also electors of his constituency in order to induce them to vote for him and also to induce the other voters likewise. The allegations with regard to this are contained in paragraphs 17, 18 and 19 of the petition. They are to the effect that the respondent paid gratification by way of money to several electors to vote for him; that he has also paid several persons for the aforesaid purpose; that a list of the said persons and the amount paid to each of them for voting for the respondent and for inducing other electors of the Bhograi constituency was given in the list appended to the petition; and that the date of such payment was also mentioned against the names of such persons.

It is also alleged that those persons had granted receipts to the respondent for having received the money from him to vote and to induce other electors of the Bhograi constituency to vote for the respondent; and that the said persons had granted receipts on payments of amounts made to them by the respondent as e consideration to vote for him and in the election to induce other electors of the said consti-tuency to vote for the respondent and the said persons on being so bribed by the respondent carried on vehement propaganda in illegally inducing each and every elector of the constituency to vote for the respondent. According to the al-legations made in the petition filed by the peti-tioner, these allegations appear to have been based upon the return of expenses submitted by the respondent to the Returning Officer and from the vouchers attached with the said return of expenses submitted by the respondent before the Returning Officer of the said consti-tuency.

Then follows a list of persons who granted receipts for payment received by them for in-ducing other electors to vote for the responden. The list contains the names of about 25 persons showing the amount received by each, the date on which the payment was received and the place at which the payment was received. The petitioner even went to the extent of mention-ing the same name twice so as to increase the number to 27. In the written statement filed by the respondent in

paragraphs 13, 14, 15 and 16, he alleged that he never paid any money, by way of gratification to anybody either to vote for him or to induce others to vote for him.

He denied having fed several persons for the aforesaid purpose and also stated that the allegations were vague, indefinite and lack in particulars and as such they were to be struck off from the petition. He further stated that the 25 persons named in paragraph 19 of the petition were workers of the respondent and the amounts paid to them represented the payments of expenses bona fide incurred at, or for the pur-pose of election duly entered in the accounts of election expenses and consequently did not amount to the corrupt practice of bribery.

He further averred that the amounts were not paid for either obtaining their votes or to induce them to induce others to vote for the respondent He also stated that the receipts were not granted by the said persons for payments made as a consideration to vote or to induce others to vote. He asserted that the persons who received the money for election expenses did not induce any voter to vote for him.

17. The petitioner in support of his allegations of the corrupt practice of bribery mainly relied upon the accounts of the election expenses lodged by the respondent under Section 78 of the Act. From the said account (Ext. 6), he pulled out the names of some 25 workers who had been paid amounts varying from Rs. 8/- to Rs. 120/-between the dates 31-1-57 to 20-3-57 which was the date of declaration of result. The petitioner Hid not examine anybody disinterested in support of his allegation as a witness. In his evidence he stated that he had seen some of the persons, namely, Anadiranjan Kanungo, Sk. aB-dul Rauf Baig, Bhuyan Mohapatra and others going round the constituency doing propaganda to the effect 'vote for Durga Babu and not to vote for Pyari as he does not reside in the village'.

This uncorroborated and interested evidence of the petitioner was not accepted and rightly by the learned Tribunal. As against this evidence of the petitioner, the respondent examined himself and stated that he appointed about 50 persons including the persons named in the petition for doing the Prachar work (propaganda); that they had charged only the fooding expenses day to day incurred by them; that the Prachar work consisted of distribution of leaflets, pasting

of posters and calling upon the voters to vote for Congress; that they were each having under them 5 to 10 volunteers who were paid their actual expenses; and that none of them had been paid or fed for giving a vote to him.

He also stated that in his constituency there are about 44 polling booths. In cross-examination, he admitted the genuineness of the vouchers Exts. 6-1 to 6-10. Ext. 6-1 is voucher No. 77 dated 21-3-57 for Rs. 80/- towards fooding expenses from 1-2-57 till 12-3-57 for election duty. Ext. 6-2 is voucher No. 63 dated 13-3-57 for Rs. 80/- towards fooding expenses from 1-2-57 till 12-3-57 for doing election propaganda work. Ext. 6-3 is voucher No. 55 dated 12-3-57 for Rs. 18/- towards fooding expenses from 1-3-57 till 12-3-57 for going about different villages to paste posters distributing election leaflets, writing of identity slips and handing over the same to the respective voters on behalf of the respondent.

Ext. 6-4 is voucher No. 53 dated 12-3-57 for Rs. 94/- towards fooding expenses from 25-1-57 till 12-3-57 for doing election propaganda work. Ext. 6-5 is voucher No. 52 dated 12-3-57 for Rs. 100/- towards fooding expenses from 19-1-57 till 12-3-57 for election propaganda work. Ext. 6-6 is voucher No. 57 for Rs. 120/- towards travelling and fooding and other expenses from 1-2-57 till 12-3-57 for election propaganda work. Ext. 6-7 is voucher No. 78 dated 21-3-57 for Rs. 80/- towards fooding expenses from 1-2-57 till 12-3-57 for election propaganda work. Ext. 6-8 is voucher No. 79 dated 21-3-57 for Rs. 52/-for election propaganda work etc. from 15-2-57 till 12-3-57 towards 'Parisramika' (labour charges) for 26 days at the rate of Rs. 60/- per month.

Ext. 6-9 is voucher No. 20 dated 26-2-57 for Rs. 12/- towards fooding and other miscellaneous expenses for carrying on the election propaganda work. Ext. 6-10 is voucher No. 13 dated 58-2-57 for Rs. 18/- for election propaganda work towards fooding expenses and 'Parisramika' (labour charge) from 1-2-57 till 18-2-57 Mr. Asok Das contends that these vouchers evidencing payment to the workers show that the respondent was guilty of a corrupt practice of bribery. All these vouchers except vouchers 79 and 13 show that the amounts were paid either towards fooding charges or fooding and travelling charges.

Payment of fooding charges or travelling charges is a legal expense and cannot amount to a corrupt practice of bribery. There are only two vouchers which show that the amounts were paid not only towards fooding charges, but also towards 'Parisramika' (labour charges). Mr. Asok Das vehemently contends that at least the payment towards 'Parisramika' is in law a payment to a canvassing agent, and as such amounts to bribery and is a corrupt practice. In the case before us, there is absolutely no evidence that the persons who gave the vouchers, that is, the workers had in any way solicited or persuaded any individual voter to vote for the respondent. All the vouchers show that the money was paid towards fooding charges etc. for doing propaganda work. Only two of them state that in addition to the fooding charges, some amount was paid towards 'Parisramika'.

In the Oriya Glossary of the English Terms published by the State Government, 'Parisra-mika' is given as the meaning of the word 'remuneration'. In the Bhasakosh, the meaning of 'Majuri' is given as 'Parisramika', that is, wages. From these two vouchers, I cannot hold that the amount was paid to the workers as remuneration for canvassing. If the worker is doing the work of putting up posters etc., the worker is to be paid the labour charges for the said work and if money is paid towards that labour styling it as 'Parisramika' it cannot be held that it is a remuneration paid to a canvas-sing agent.

The workers who gave these two vouchers cannot be said to be canvassing agents as used in the English law and are not paid as canvassing agents. On this evidence and on the observations made by me, the matter could have been disposed of against the appellant. But the learned counsel on both sides placed before us numerous authorities from English law, and consequently I think, I must deal with the contentions put forward by them.

18. Mr. Asok Das contended that under the English Law employment of a paid canvassing agent is an illegal employment and if the illegal employment is had recourse to by the candidate or his agent, then it amounts to an illegal practice and bribery. In support of this contention he placed before us the various sections under the Representation of the People Act, 1949 (12 and 13 Geo-6) Sections 78, 80, 84 and 91 of the said Act deal with illegal practices. Section 96 of the Act

prohibits paid canvassing. It says,

"If a person is, either before, during or after an election, for the purpose of promoting or procuring the election of a candidate, engaged or employed for payment or promise of payment as a canvasser, the person so engaging or employing him and the person so engaged or employed shall be guilty of illegal employment.'

Section 96 says that a person knowingly providing money for illegal purposes shall be guilty of an illegal payment. Section 99 deals with bribery and is as follows:

'(1) A person shall be guilty of a corruptpractice if he is guilty of bribery.

(2) A person shall be guilty of bribery if he, directly or indirectly, by himself or by any other person on his behalf,

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(c) makes any such gift or procurement as aforesaid to or for any person in order to induce that person to procure, or endeavour to procure, the return of any person at an election or the vote of any voter.

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(4) The foregoing provisions of this section shall not extend or be construed to extend to any money paid or agreed to be paid for or on account of any legal expenses incurred in good faith at or concerning an election,'

Under Section 139, if a candidate who has been elected is reported by an Election Court personally guilty or guilty by his agents of any corrupt or illegal practice his election shall be void. Section 142 provides for avoidance of election for general corruption.

Sections 146 to 152 deal with prosecutions for currupt or illegal practices, costs and mitigation and remission of incapacities. Then Section 153 deals with prosecution for the offences of illegal payments, employments or hirings and Clause (2) of the section says that a candidate or election agent who is personally

guilty of an offence of illegal payment, employment or hiring shall be guilty of an illegal practice. Under the English law, bribery under Section 99, treating under Section 100 and undue influence under Section 101 and personation making a false declaration as to election expenses, incurring certain expenses without the authorisation of the election agent are corrupt practices. Mr. Das also relied upon a passage in para 399 at page 229 of Halsbury's Laws of England, Third Edition Vol. 14 wherein it is stated,

'If a person is, either before, during or after an election, for the purpose of promoting or procuring the election of a candidate, engaged or employed for payment or promise of payment as a canvasser the person so engaging or employing him and the person so engaged or employed is guilty of illegal employment. A person who is lawfully engaged or employed for payment for some lawful purpose is not, however, deprived of the ordinary right of a citizen to canvass and he may therefore canvass so long as it is not for his canvassing that he is paid. Although the payment of canvassers is illegal, there is nothing illegal in the payment of the expenses of a canvass.'

On these provisions and authorities, the learned counsel Mr. Das contends that inasmuch as some payments are made to the workers, the said pay-ments amount to employing paid canvassers which amounts to bribery and a corrupt practice.

19. Mr. Rath appearing for the respondent submitted that even under the English law canvassing is something different from doing propaganda work and that though employment of paid canvassers is prohibited, expenses of a canvass are legal expenses. In para 303, at page 171 of Halsbury's Laws of England, Third Edition, it is stated,

'A canvasser is a person who solicits and persuades individual voters, though not necessarily one by one separately, to vote for a candidate.'

If such a person is paid, no doubt, under the English law a payment to such a canvasser is an illegal payment. Mr. Rath further contends that under the English law, it is only colourable employment of an excessive number of messengers who

rendered the adequate services for the remuneration given to them would amount to bribery, but a bona fide employment of a required number of workers even though they are paid does not amount to an illegal payment or bribery.

In Stroud case. 2 O'M and H 179 (F), it was held that payment of Wages may or may not be bribery according to circumstances; that it might be charity; and that it would be impossible to find that it was corruptly done unless there had been some previous engagement or something else to make that wrong which would otherwise be right. It was also held that mere payment of wages to labourers although they did not work on the polling day, does not necessarily constitute bribery in the absence of express promise to that effect; and that the promise struck out by the Act of Parliament must not only be a promise of money to voters but it must be a promise to voters in order to induce any voter to vote or refrain from voting.

It is stated that the Legislature only intended to prohibit acts done with the specific object of influencing the mind of the individual voter to whom they had relation by the particular temptation held out to him, but it did not intend to prevent an act being done to a person, a kind and good act in itself, merely because it had a tendency to make that person favourable to the persons doing it. In Penryn case, 1 O'M and H 127 (G), it was held that bona fide employment of those whose services a man needs is not bribery; just as it is not bribery to give bed to a guest in the giver's own station of life that he may vote. Willes J. observed in the judgment at page 130,

'The conclusion adopted in those cases Is that unless the employment was colourable, unless, that is to say, it was an employment only in name, and it was shown that the money was given either for doing nothing or was given in excess for the services fairly rendered By the voter, there was no bribery .....Where, however, there is the case ..... of a man who intended to vote for the Respondents, and through the intervention of an agent of theirs, got a month's work there is not necessarily a case within the terms of the second election of the Corrupt Practices Prevention Act, 1854.'

In Youghal case, 1 O'M and H 291 (H), it was held that over-payments to agents did not constitute a bribery. Mr. Justice O' Brien observed at page 296,

'Considering the very penal consequences attaching to bribery, and that if these over-payments to agents were to be considered as acts of bribery they would be acts of personal bribery by the candidate himself who paid those agents, I cannot come to the conclusion that they could be considered as such, or that it was the intention of the Legislature to make them so; such an intention would, I think, have been expressed in clear and unambiguous terms.'

vide also the Counties of Elgin and Nairn case, 5 O'M and H 1 (I), and the Lichfield Division case, 5 O'M and HP 27 (J).

In Armstrong v. Crooks, (1871) H.E.C. 97 (K), it was held that the bona fide employment and payment of a voter to canvass voters belonging to a particular religious denomination, or to the same trade or business, or to the same rank in life, or to canvass voters who only understand the French or Celtic languages, is not illegal and that the fact that such voter has skill or knowledge and capacity to canvass would not make his employment illegal. In the Oxford City case, (1857), Wolf and D 106 (L), in which at an election for the city of Oxford, having a constituency of 2600 electors. N., a candidate, employed for several days 198 persons as clerks, messengers and runners, of whom 152 were electors and voted for N. N. was elected, and, afterwards, paid all these persons for their services, it was held that there were merely colourable employments and there being no proof of any substantial services corresponding to the rule of payment N. was not elected and the election was void for bribery.

On these sections and the authorities under the English law, I am of opinion that it is only a colourable employment of voters as workers and payments to them that would be bribery. But if the payment is commensurate with the work done and the number of voters engaged as workers is commensurate with the work to be done in the constituency then payment to such workers cannot be bribery.

20. The law in India regarding election is codified in the Representation of the People Act, 1951 and even under the law in India, payment of legal expenses to

workers who are voters cannot be said to constitute bribery. Section 123 is the relevant section dealing with corrupt practices and is as follows,--

'123. Corrupt practices. -- The following shall be deemed to be corrupt practices for the purposes of this Act:--

(1) Bribery, that is to say, any gift, offer orpromise by a candidate or his agent or by anyother person of any gratification to any personwhomsoever, with the object, directly or indirectly of inducing-

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(b) an elector to vote or refrain from voting at an election or as a reward to --X X X X XExplanation -- For the purposes of this clausethe term 'gratification' is not restricted to pecuniary gratifications or gratifications estimable inmoney and it includes all forms of entertainment and all forms of employment for rewards,but it does not include the payment of anyexpenses bona fide incurred at or for the purpose of, any election and duly entered in theaccount of election expenses referred to in Section 78.

XXXXX'

Under this provision, a gift, offer or promise ofany gratification to any person whomsoevermust be with the object, directly or indirectlyof inducing an elector to vote. Mr. Asok Dascontends that most of these workers to whom the feeding charges etc. were paid, according to the vouchers, are voters and the money was paid to them to induce them to vote and to induce other voters to vote for the respondent.

It is in evidence that only 50 workers wexe engaged by the respondent. The petitioner himself has given the names of only 26 persons. There are about 44 polling booths in the constituency. I do not think, the number of workers engaged and paid for their fooding charges and travelling expenses and in two cases for 'Parisramika' amounts to a gratification to induce them to vote or to induce other voters to vote. There is absolutely no evidence that these wor-kers induced any of the voters to vote for the respondent.

It cannot be said that paying the worker, even assuming that it is a remuneration to the said worker, is an indirect inducement to the elector other than the worker to vote for him. The expression 'directly or indirectly' only refers to the person who is the recipient of the gratification. He will be directly the recipient of the gratification if he receives it. He would be indirectly the recipient of the gratification if it is given to anybody in whom he is interested. The word used in Section 123 is 'inducing' I have already shown that under the English Law, the word 'canvasser' means a person who solicits the vote.

In Wharton's Law Lexicon, the meaning given to the word 'inducement' is an allegation of a motive; an incitement to a thing. In the Oxford Dictionary, the meaning of 'induce' is to lead (a person), by persuasion or some influence or motive that acts upon the will, some action, condition, belief, etc.; to lead on move, influence, prevail upon (any one) to do something. The meaning of the word 'induce' as given in the Oxford Dictionary and Wharton's Law Lexicon shows that the word 'induce' is something different from merely doing propaganda work to vote for the Congress candidate.

To come under Section 123, Clause (1), the act done by the person who was paid the gratification, directly or indirectly, must be something more than mere asking the electors to vote for the Congress candidate. There must be some influence brought to bear upon the will of the voter. There is no evidence that the workers prevailed upon any voter or incited any voter to vote for the respondent.

21. Mr. Rath, the learned counsel for the respondent, contended that even the two vouchers referring to 'Parisramika' amount only to expenses bona fide incurred at or for the purpose of an election and they were duly entered in the account of election expenses referred to in Section 78 and as such by the explanation to Section 123, Clause (1), these two instances are the other instances covered by the vouchers filed by the respondent on which the petitioner relies to make out a case of bribery do not amount to gratification under Clause (1) of Section 123.

It is Mr. Rath's contention that though the word 'Parisramika' is used in the two vouchers, it refers to nothing but expenses bona fide incurred as contemplated in the explanation and as they are duly entered in the account of election expenses,

it does not amount to gratification and consequently to bribery and a corrupt practice under Section 123. Mr. Rath relies upon a decision of Rangoon High Court in the case of Pillai v. Dangali, AIR 1942 Rang. 52 (M). In that case it was held by Mr. Justice Sharpe,

'A candidate may lawfully pay either an association of persons or an individual to work for him at an election, but he may only pay what is a reasonable sum for the particular work done. Where that payment is to a voter it may, however, amount to a bribe if the payment is out of all proportion to the work done or agreed to be done. Whether any particular payment by a candidate is or is not a bribe must always fall to be decided upon the particular facts of each case.'

22. Further it is clear from the vouchers that the maximum amount paid to the workers is Rs. 2/- per day during the period they did the work. This cannot be said to be an illegal payment. It covers the fooding and travelling charges for the day of work. Even the expression 'at Rs. 60/- per month' does not go to show that it is a payment to the agent. It is only a payment of fooding charges of the worker. It cannot be said that Rs. 2/- a day is an excess payment for fooding charges. Even if it is a case of excess payment, it is covered by the principle laid in Youghal case (H).

23. Lastly Mr. Asok Das relied upon the repeal of Rule 118 and Schedule VI under the old Act which provided for employment on remuneration of four categories of persons, one under each category as indicating that the legislature intended not to countenance employment of any person even to that limited extent on remuneration for purpose of propaganda and if the person happens to be an elector he should be presumed to have been paid for giving a vote.

On the other hand, Mr. Rath contended that the old Rule 118 contemplated employment on remuneration of only four categories of persons and its repeal indicated that now any number of persons more than those four categories may be employed provided it does not amount to a colourable employment. It is not necessary to take this question into consideration inasmuch as the number of workers engaged by the respondent is proportionate to the number of polling booths and the area of the constituency.

24. In Nanak Chand Pandit and Prem Nath Chadha's Law of Elections, it was observed,

'By the existing law employment by the respondent's agents of paid voters for the purpose of the election is not illegal and does not per se invalidate the election, notwithstanding the fact that every elector, so employed is guilty, of a misdemeanour if he votes.'

This view seems also, in my opinion, to be consistent with the decisions and the scheme of the Representation of the People Act, 1949 under the English Law.

25. I am, therefore, of opinion that the respondent is not guilty of bribery and is n'ot guilty of any corrupt practice,

26. The appeal fails on all the points. The order of the learned Tribunal is correct. The appeal is dismissed with costs. Hearing fee 'is Rs. 250/-.

Narasimham, C. J.

27. I agree that the appeal should be dismissed with costs and hearing fee of Rs. 250/-.

28. As regards some of the points raised by the parties and discussed in the judgment of my learned brother I wish to add a few words.

29. The two tube-well contracts entered into between the respondent and the Government (Exs. 4 and 5) contain an express stipulation to the effect that if the work is not completed to the satisfaction of the Sub-Divisional Officer, the contractor (respondent) would refund the sum taken and also pay interest at 6 1/4 per cent per annum -- see condition No. (5) of Exts. 4 and 5. It was therefore argued by Mr. Asoka Das that one of the important terms of the contract was not merely to sink tube-wells, but also to sink them in such a manner as to satisfy the Sub-Divisional Officer that the work was done in accordance with the sanctioned plan and estimate.

Until such satisfaction was recorded the respondent's liability under the contracts subsisted, and the mere fact that the Sub-Divisional Officer in the order sheet

(Exs. 4/1 and 5/1) directed Final Payment of the balance due to the respondent would not show that the respondent is relieved of the obligations under the contracts. The order-sheet of the Sub-Divisional Officer shows that after directing final payment he asked the E.O. (Engineering Overseer) to get the measurements done by the 30th July, 1955.

This order was obviously passed with a view to satisfy himself that the projects had been executed in accordance with the sanctioned plan and estimate. It was admitted by P.W. 3 that the records do not show that the Engineering Overseer submitted any report in regard to these projects. Mr. Dag therefore urged, relying on the Supreme Court decision reported in AIR 1954 SC 236 (C), that the performance on both sides, under the contract, was not yet completed and that the contract subsisted.

30. I am inclined to agree with Mr. Das that the promise of the respondent to the Sub-Divisional Officer was not merely to carry out the projects, but to carry them out to his satisfaction and until such satisfaction is recorded he cannot be said to have fulfilled his promise-But the question arises whether the Sub-Divisional Officer or the Engineering Overseer working under him could indefinitely postpone the taking of measurements at the spot and the recording of satisfaction, so as to keep the contract subsisting as long as they choose.

31. The order of the Sub-Divisional Officer was passed on 7th July, 1955 and though more than two years had elapsed by the time the election case was being heard by the Tribunal, the report of the Engineering Overseer was not received. I think it is one of the implied terms of the contracts that the Sub-Divisional Officer should also, within a reasonable time, record his satisfaction or otherwise in respect of the work done by the respondent; and if he fails to record such satisfaction within a reasonable time it is open to the respondent to say that he has no further liability under the contract.

What is reasonable time for this purpose must essentially be a question of fact to be decided in the circumstances of each case. But as the two tube-wells in question were admittedly sunk in the flood-affected area of Balasore district (Bhograi Thana) it would be reasonable to hold that the measurements should be

taken by the Engineering Overseer as soon as intimation is given to him that the work is completed by the contractor and in any case it should not be postponed beyond the next monsoon.

If the Sub-Divisional Officer and his subordinate, viz., the Engineering Overseer postponed giving the completion certificate for nearly one and half years, that delay must be held in) the circumstances of the present case to be unreasonable. In fact the evidence of the respondent is to the effect that there is at present no trace of the platform of the Tube-well in Taladi village (which is the subject-matter of Ext. 5) and that the tube-well broke down two years after it was put up. Such results are bound to happen if the taking of measurements at the spot is unreasonably delayed by the officer concerned.

I would therefore take the view that though the respondent's contract with the Sub-Divisional Officer would ordinarily continue to subsist so long as the completion certificate is not obtained, the unreasonable delay on the part of the Sub-Divisional Officer and his subordinate in issuing the certificate brought about the discharge of the contract and that it did not subsist on the date of the nomination.

32. As regards the balance of the advance T.A. due from the respondent to the Government in connection with the journey performed by him to Berhampur in May 1955 for the exhibition held there I would take the view that the holdings of exhibitions by the State is in the nature of a service undertaken by Government. Such exhibitions have great educative and publicity value and if the State undertakes to hold such exhibitions it is difficult to say that a service is not undertaken by the State, especially when in the budget it is clearly stated that it is a 'new service'.

The respondent was asked to attend the exhibition because he was then working as an Assistant District Public Relation Officer. I have also no doubt that when he took advance T. A. of Rs. 60/- for attending the Exhibition there was an implied contract between him and the Government to the effect that after completion of the journey he would submit a regular T. A. bill and if the amount actually due to him as T. A. under the rules is less than the amount taken as advance he would refund the balance; and in the alternative if the amount so due is in excess of the amount

taken as advance he would receive the balance.

But the question arises whether this implied contract was really included within the mischief of Section 7(d) of the Representation of the People Act 1951. I would agree with my learned brother relying on 7 Ele. LR 416 (E), that the 'contract' referred to in Section 7(d) is a contract directly for the performance of the service itself and will not include ancillary contracts connected with the performance of such service.

An implied contract regarding the travelling allowance payable for the journey is purely ancillary and it cannot be held to be a contract directly for the performance of any service; and even though the respondent had an interest in that ancillary contract in the sense that he was bound to refund the balance to the Government, I do not think he can be held to come within the mischief of Section 7(d) of the Act.

33. Next I take up the question relating to the maintenance of accounts of election expenses in contravention of the provisions of Section 77 of the Representation of the People Act which according to Mr. Das amounts to a corrupt practice, by virtue of Sub-section (6) of Section 123 of that Act. It is not the case of Mr. Das that any item of expenditure in connection with the election incurred by the respondent was not incorporated in the account. His main contention is that the accounts do not show the expenditure incurred day to day by some of the workers of the respondent.

It appears that when the respondent authorised his workers to incur expenditure on his behalf he gave them some liberty of action but ultimately paid them lump sums whenever they submitted their bills and such lump sum payments have been noted in the accounts. Mr. Das urged that Rule 131 of the Conduct of Election and Election Petition Rules requires that the accounts should show particulars about the dates on which each of the workers was authorised to incur expenditure on the respondent's behalf.

Even if this argument is taken as correct, I do not think a slight irregularity in the maintenance of accounts as required by Rule 131 would be a corrupt practice for the purpose of Sub-ssection (6) of Section 123 of the Act. Doubtless, if any

amount actually expended is not brought into the accounts it would clearly constitute corrupt practice inasmuch as the total amount of expenditure prescribed may be exceeded and thereby Sub-section (3) of Section 77 contravened. But every petty irregularity in the manner of maintenance of accounts so long as the correctness of the entries is not in doubt, will not suffice to bring Sub-section (6) of Section 123 of the Act into operation.

34. Lastly the question as to whether the employment of a paid canvasser would amount to bribery as defined in Sub-section (1) of Section 123 of the Act, was discussed at great length. The difference between the English law and the Indian law on the subject has been noticed in the judgment of my learned brother. In the English law there is an express section (Section 96 of the Representation of the People Act 1949), to the effect that the employment of paid canvassers is illegal. But in the Indian Representation of the People Act, 1951, there is no such express section. But Mr. Das urged that the definition of 'bribery' in Sub-section (1) of Section 123 is so wide as to include employment of a paid canvasser.

There is considerable force in his contention that if a candidate engages a paid canvasser and pays him remuneration for the purpose of inducing the voters to vote for him such engagement of canvassers is made with the object of 'indirectly inducing the electors to vote' as described in that section and it may amount to bribery, the object of such engagement being for the purpose of indirectly persuading the electors to vote. The candidate, instead of directly approaching the elector merely uses the canvasser as his medium and thus the approach to the voters is indirect. Nevertheless the object of engaging the canvasser is to induce the voters to vote. But the explanation to Sub-section (1) of Section 123 expressly says that 'the payment of any expenses bona fide incurred at or for the purpose of an election and duly entered in the account of election expenses' is excluded from the definition of bribery.

It is admitted that the respondent had duly entered into the accounts all payments made to his workers. His bona fide is undoubtedly beyond question. The sums paid to the workers are not so large as to lead to a reasonable inference that they do not represent the expenses incidental to canvassing, i.e. expenses connected

with travelling allowance, food expenses, cost of posters, etc.

There is no direct evidence on the side of the appellant to show that the expenses incurred by the workers engaged by the respondent were far in excess of the actual expenses incidental to the election. We were however asked to draw such an inference from the use of the word 'Parishramik' in some of the vouchers. This expression might have been incorrectly used but when the amounts so spent are not large and have been duly entered in the accounts I am inclined to take the view that the sums paid to the workers are merely incidental expenses of canvass and not payment of wages or that the definition of 'bribery' in Sub-section (1), Section 123 is so wide as to include the employment of a paid canvasser.

There is considerable force in his contention that if a candidate engages a canvasser and pays him remuneration for the purpose of inducing the voters to vote for him, such engagement is made with the object of 'indirectly inducing the electors to vote' as described in that section and may amount to 'bribery' -- the object of such engagement being for the purpose of indirectly persuading the electors to vote. The candidate, instead of directly approaching the electors merely uses the canvasser as his medium and his approach to the voters is thus indirect.

Nevertheless, the object of engaging a canvasser is to induce the electors to vote for the candidate. But the explanation to Sub-section (1) of Section 123 expressly says that 'the payment of any expenses bona fide incurred at or for the purpose of an election and duly entered in the accounts of election expenses 'is excluded from the definition of 'bribery'. It is admitted that the respondent had duly entered in his accounts all payments made to his workers. His bona fide are undoubtedly beyond question. The sums paid to his workers are not so large as to lead to a reasonable inference that they do not represent the expenses incidental to canvassing, i.e. expenses connected with travelling allowance, food expenses, cost of posters, etc, as stated by the respondent.

There is no direct evidence on the side ofthe appellant to show that the expenses-incurred by the workers engaged by the respondentwere far in excess of the actual expenses incidental to an election. We were however askedto draw such an inference from the use of theword 'Parishramik' in' some of the vouchers.This

expression might have been incorrectlyused but when the amounts so spent are notlarge and have been duly entered in the accounts I am inclined to take the view that thesums paid to the workers merely represent theexpenses incidental to canvassing and were notpaid by way of wages or remuneration to thecanvasser. Even under the English law as pointed out at page 229, paragraph 399 of Halsbury'sLaws of England, III Edition, 4th Volume, thereis nothing illegal in the payment of 'expensesincidental to a canvass'.