

# Om Prabha Jain vs Abnash Chand & Anr on 7 February, 1968

**Equivalent citations: 1968 AIR 1083, 1968 SCR (3) 111, AIR 1968 SUPREME COURT 1083**

**Author: M. Hidayatullah**

**Bench: M. Hidayatullah, R.S. Bachawat**

PETITIONER:

OM PRABHA JAIN

Vs.

RESPONDENT:

ABNASH CHAND & ANR.

DATE OF JUDGMENT:

07/02/1968

BENCH:

HIDAYATULLAH, M.

BENCH:

HIDAYATULLAH, M.

BACHAWAT, R.S.

CITATION:

1968 AIR 1083

1968 SCR (3) 111

CITATOR INFO :

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|---|-------------|------|
| R | 1971 SC 241 | (9)  |
| R | 1971 SC2025 | (56) |
| R | 1975 SC1612 | (50) |
| F | 1975 SC1634 | (8)  |
| F | 1976 SC 27  | (14) |
| R | 1980 SC 701 | (14) |

ACT:

Election--Minister making discretionary grant--When amounts to corrupt practice.

HEADNOTE:

The State of Haryana came into existence On 1st November 1966. The Cabinet placed certain sums of money at the disposal of the ministers, one of whom was the appellant to be used at their discretion for purposes of public utility, for the benefit of the general public and for the uplift of backward communities. The money had to be disbursed before

31st March 1967 through Panchayat, Municipal or Government agencies. The appellant sanctioned certain payments for building two dharmashalas in two wards of a Municipality. Long after the sanction, her candidature for election to the Vidhan Sabha of the State was recognised by her party and she stood for election from a constituency which included these two wards.- She was elected, and-some time later, the money was made available to the wards though the recipients were writing that the money should be made available at once. The first respondent challenged the election alleging corrupt practices and later amended the petition giving better particulars. The pleas in the petition contradicted each other, the evidence tendered at the trial of the petition contradicted the pleas, and the witnesses were found to be thoroughly unreliable. In spite of this the petition was allowed on the ground that the circumstances showed that they were in fact paid to bargain for votes and to influence the voters in favour of the appellant.

In appeal to this Court,

HELD : The action of the appellant could not be construed against her. It was done in the ordinary course of her duties as Minister and there was no evidence that it was, directly or indirectly, part of a bargain with the voters. No hurry to make the money available to the recipients emanated from the appellant. It was only the persons who were to benefit by the discretionary grant that were anxious to lay hands on the money, as soon as possible, so that the grant might not be cancelled later by a change of attitude caused by the election going against the particular party.

[117 H; 118 A--C]

Ghasi Ram v. Dal Singh & Ors. [1968] 3 S.C.R. 102 followed. Bhagwan Dutta Shastri v. Ram Ratanji Gupta, A.I.R. 1960 S.C. 200 and Kandaswami v. Adityan, 19 E.L.R. 260, referred to.

#### JUDGMENT:

**CIVIL APPELLATE JURISDICTION:** Civil Appeal No. 1862 of 1967. Appeal under s. 116-A of the Representation of the People Act 1951 from the judgment and order dated November 16, 1967 of the Punjab and Haryana High Court in Election Petition No. 19 of 1967.

A. K. Sen, B. Dutta, P. C. Bhartari, M. L. Aggarwal and J. B. Dadachanji, for the appellant.

The Judgment of the Court was delivered by Hidayatullah, J. This appeal is directed against the judgment of the High Court of Punjab and Haryana at Chandigarh, November 16, 1967 by which the election of the appellant to the Vidhan Sabha of Haryana State from the Kaithal constituency has been declared to be void. The election was held on February 19, 1967 and the result of the poll was declared on February 22, 1967. The appellant had a margin of nearly 2000 votes over the first respondent who was the closest rival. One other candidate had also stood but we are not concerned

with him in the present appeal since he has not shown any interest in it. He secured less than 1000 votes and forfeited his security. The election petition was based upon allegations of corrupt practice against the successful candidate. The gravamen of the charge was that she as a minister in the Government of Mr. Bhagwat Dayal Sharma used certain discretionary grants to bribe the voters of her constituency and in particular by paying two sums, of Rs. 2,000 for the construction of two dharamsalas, for the Kumhar and the Sweeper Colonies at Kaithal. There were other allegations also against her but as they have been found against the election petitioner and have not been brought to our notice we need not say anything about them. The learned Judge who tried the election petition did not accept the evidence tendered by the election petitioner to prove the corrupt practice outlined above but held on a general appraisal of the circumstances of the case that these sums were in fact paid to bargain for votes and to influence the voters in favour of the appellant. We shall now give a few facts of the case before stating our conclusion.

The election petition was filed on April 7, 1967. It was later amended and better particulars were supplied on July 29, 1967. In the original election petition as filed by the election petitioner it was stated that a sum of Rs. 2,000 from the discretionary grant of the appellant was paid to the Harijans of Keorak Gate, Kaithal for the construction of a dharamsala. The allegation then was that in the beginning of January 1967 the Harijans were approached by the appellant and were asked to vote for her. They flatly refused to vote for her. Thereupon she promised to provide funds for the construction of a dharamsala in their basti and tempted by this offer they agreed to vote for her. In regard to the other discretionary grant it 'was' stated in the original petition that the Kumhar voters who reside in Dogran Gate, Kaithal, were also approached, by the appellant in the beginning of January 1967 and were asked to vote for her. When they refused to vote she promised them a sum of Rs. 2,000 for building the dharamsala in their locality. It was further pointed out that the first sum of Rs. 2,000 was paid through the Deputy Commissioner, Kamal, vide his Memo No. 78-BP-III/67/335 of January 12, 1967. The second payment was also made on the same date through the Deputy Commissioner, Karnal, vide Development Department Memo No. 47-BAP-III-67/326. The affidavit in support of the election petition was sworn by the election petitioner on information supplied by others and believed to be true. It was stated in the verification clause that this information was received "from my workers and believed to be true".

On an objection being raised that the particulars of the corrupt practice were not adequate and on the other hand vague and that the affidavit did not disclose the persons from whom the information was derived the Court ordered that better particulars be supplied and a fresh affidavit filed. The amended election petition was then filed in July, 1967. In this election petition a change was introduced. It was stated that on December 22, 1966 the Harijans were called to a Canal Rest House through one Om Prakash Shorewala. President of the Municipal Committee, Kaithal. Other members of the Municipal Staff including the Executive Officer Bhalla were also present. Among those who came were one Khaki Ram, Banwari Lal and one Harijan Lamberdar whose name was not given. In the presence of these persons request was made to the Harijans to vote for the appellant, and when they refused to do a sum of Rs. 2,000 was promised from the discretionary grant, and on this offer the Harijan voters consented to vote for the appellant. It was further alleged that this amount was ultimately paid to Khaki Ram and Banwari Lal through Shri Om Prakash Shorewala (R.W. 4). As regards the second charge it was stated that on December

29. 1966 the Kumhar voters were summoned- to the Canal Rest House and three persons, Thakru, Attra and Lilloo came as the representatives of the Kumhar community. The same procedure, viz., asking them to vote for her candidature was followed by the appellant and on their refusal to do so a sum of Rs. 2,000 was promised to them for the construction of a dharamsala in their basti at Dogran Gate. Kaithal. This induced them to change their views. The affidavit was also corrected. It was stated that the allegation was based upon information received from Pandit Kailash Chander, s/o Pandit Hari Ram of Kaithal and Ch. Inder Rai, ex-Municipal Commissioner, Chandena Gate Gamri, Kaithal.

In answer to the amended election petition the written statement added that the allegation was a pure concoction. The appellant pointed out that the grant for the construction of the dharamsalas was made by the appellant as far back as December 19, 1966 and that the allegation that it was the result of a bargain either on December 22 or December 29, was a pure fiction.

The election petitioner examined fourteen witnesses. We are, however, not concerned with all of them because they are connected with the other allegations in the election petition. Witnesses bearing upon this case were only four. They were Gurbax Singh (P.W. 1), who only proved certain documents, P. N. Bhalla (P.W. 3), the Executive Officer of the Municipality, Thakru (P.W. 8), whose name has already been mentioned by us and Abnash Chander, the election petitioner. In the evidence a change was again introduced. It was attempted to be proved that the bargain which had been referred to in the election petitions actually took place on December 3, 1966. This time it was affirmed that the Kumhars and the Sweepers were called together. An objection was taken before the learned Judge that this evidence could not be considered because the plea was quite different. The learned Judge ruled that the objection would be decided later. It appears that the learned Judge did not put too much emphasis on the change of pleading presumably because he found the evidence to be unsatisfactory and unreliable. On the side of the appellant were examined one R. N. Kapur (R.W. 1), the personal Secretary of the appellant who proved her tour programme to give a lie to some of the allegations in the election petition. Attroo (R.W. 3), who was said to have been present at the conferences, Om Parkash Shorewala (R.W. 4), the Municipal President, Mr. Bhagwat Dayal Sharma (R.W. 5), the Chief Minister in whose Ministry the appellant was working as the Finance Minister and the appellant herself.

It is not necessary to go largely into what the witnesses said because the learned Judge himself observed as follows "Whereas according to the respondent the fact of the grant is not disputed, but it is denied that the grant was made in consideration of these communities voting for her. If the matter had remained at this stage and the executing agency (the Sub-Divisional Magistrate) had disbursed these grants I would not have been prepared to accept the oral evidence regarding the bargain which led to the grants. But the manner, how the money was realised and disbursed, lends ample support to the evidence that the bargain was struck."

It is clear that the learned Judge was of the opinion that the evidence led to prove the conference and the bargain at the con-

ference was unacceptable. He, however, accepted it because it was supported by circumstantial details of the withdrawing of the money which was sanctioned; but for this the learned Judge would not have accepted the election petition.

We shall glance at this evidence which has been led in the case. As pointed out above the only witnesses from 'the conference are Thakru (P.W. 8) and Bhalla (P.W. 3). With regard to Thakru it is sufficient to point out what the learned Judge himself said at the end of the deposition of Thakru : "The testimony of, this witness has not at all impressed me. I will place no reliance whatsoever on his testimony." In view of this observation of the learned' Judge we think we are entitled to ignore his testimony altogether. As regards Bhalla (P.W. 3), he seems to have deposed not only in respect of these two grants but every allegation made in the election petition. Mr. A. K. Sen, for the appellant, very pertinently described him as an omnibus witness. His evidence is not convincing. It appears on the record of this case (and it was in fact admitted by Bhalla) that the appellant had taken action against him in respect of a house which fell down owing to the negligence of the Municipal Authorities. It appears to us that Bhalla was hostile to the appellant. There is enough material to show that he was trying to get even with the appellant for her action in putting the blame upon him for the falling down of a house from seepage of water from the municipal mains. The learned Judge did not place any direct reliance upon Bhalla's testimony. As we have shown above, if it had not been for the circumstances attending the grant the learned Judge himself would have discarded his testimony. We must, therefore, proceed with extreme caution in dealing with Bhalla's evidence in the case. It may be pointed out here that in the election petition as well as in the evidence it was stated that the Harijans and Kumhars were summoned through Bhalla and the peon was ordered by Om Prakash Shorewala to call the leaders of these two communities to the Canal Rest House: Sat Prakash, the peon was not examined in the case. Of the persons present on the first occasion, viz., Banwari Lal, Khaki Ram, Lilloo and Attra and the Harijan Lamberdar who was not even named, none was examined except Attroo and Thakru. Attroo was examined by the appellant. We have shown above that the learned Judge placed no reliance upon Thakru's word. He made a similar remark about Attroo also so that the case really comes to this that there is only the evidence of the parties and such other evidence as was furnished by Shorewala and Bhalla. The persons from whom information was derived as stated in the verification of the affidavit were not called as witnesses. We have shown that Bhalla's testimony must not be taken on its face value., Om Prakash Shorewala was support-

ing the election petitioner but even so his evidence goes in favour Of the appellant. The fact, 'however. remains that the . election petitioner himself was fumbling with the facts and was not able to state quite categorically when the conferences took place and on what date and at which place. He changed the dates as more information came to hand. This was not information about the conferences but the date on which the grant was sanctioned and the dates on which the appellant could be expected to have held the conferences. In these circumstances, we are satisfied that in this case the oral evidence is practically non-existing. Mr. Mehta, who argued the case on behalf of the answering respondent, stated that it was not necessary at all to give the facts about the conferences and that the charge of bribery could be proved even without the details of how the bribe came to be given. He relied upon the judgment of the Madras High Court in Kandaswami v. S. B. Adityan for the proposition that a bribe is a bribe although the date on which it is given may not be capable of

being specified if it could be established otherwise that the money was in:

fact paid; and he further relied on a judgment of this Court in *Bhagwan Datta Shasri v. Ram Ratanji Gupta & Ors.* (1). that even if the full particulars be not given evidence might still be led to determine whether a corrupt practice had in fact taken place or not. We need not decide in this case what the pleadings and the proof should be. The ordinary rule of law is that evidence is to be given only on a plea properly raised and not in contradiction of the plea. Here the pleas were made on two different occasions and contradicted each other. The evidence which was tendered contradicted both the pleas. The source of the information was not attempted to be proved and the witnesses who were brought were found to be thoroughly unreliable. In these circumstances we do not propose to refer to the evidence in this judgment any more. This brings us to the question whether the circumstances of this case clearly demonstrated that there must have been some kind of bargain before the grant was made and that this bargain was with a view to inducing the voters to support the candidature of the appellant. In *Ghasi Ram v. Dal Singh & Ors.* (3) in which the judgment of this Court was pronounced today, the law relating to corrupt practice specially in the matter of giving of discretionary grants has been considered and stated. It has been pointed out that a Minister in the discharge of his duties may be required to do some acts of administration including the granting of money for the uplift of certain communities and this action of the Minister is not to be construed against him unless it can be established (1) 19 E.L.R. 260.

(3) [1968] 3 S.C.R. 1' 2.

(2) A.I.R. 1960 S.C. 200.

that there 'was a bargain with the voters for getting their assistance at the election. Since the oral evidence in this case is non-existing we must now look at the circumstances whether this conclusion which has been drawn by the High Court can be irresistibly reached.

The State of Haryana came into existence on November 1, 1966. Immediately afterwards the Cabinet placed certain sums of money at the disposal of, the Chief Minister, the Cabinet Ministers, Ministers for State and Deputy Ministers, to be used at their discretion for the uplift of the communities. A sum of Rs. 50,000 was placed in the discretionary grant of a Minister and the appellant as the Finance Minister in the Ministry of Shri Bhagwat Dayal Sharma was required to spend this money. The money had to be disbursed before the end of the Financial Year, that is to say, before March 31, 1967. It is reasonable to think that there must have been several demands in this State from the various community centres for their own uplift and they must have been clamouring even before for money for the establishment of schools, hospitals, supply of water, and so on. The policy statement attached to the sanction of the discretionary grant stated the purposes for which the money could be utilised. It was stated quite clearly that the money should not be given to any private person 'but should be given through the Development Commissioner for purposes of public utility and for benefit of the general public and that the execution of the works should be through certain named

agencies such as Zilla Parishad, Panchayat Samities, the Panchayats concerned, the Public Works Department or any other Government Agencies or Municipality as the Minister may indicate. In the present case money was to be disbursed through the Municipal Committee.

It is argued that the money was withdrawn and made available a day before the poll suggesting thereby that this was done to assure the voters that the money had come in as a result of the bargain. The hurry in reaching the money to these two wards in the Kaithal Municipality is the main reason behind the learned Judge's conclusion that it must have been a part of a bargain. Evidence, however shows that Bhalla (who was not favourable to the appellant) himself wrote saying that the money should be made available at once; and this money came to the hands of Om Prakash Shorewala, who, as we have already pointed out, was helping the answering respondent in his election. It appears to us that all this hurry which did not emanate from the appellant was the result of and anxiety on the part of the recipients that the money should be made available as soon as possible. There is always a risk of a change of attitude particularly if the election goes against a particular party. The persons who were to benefit by the discretionary