

PETITIONER:
BALWAN SINGH

Vs.

RESPONDENT:
PRAKASH CHAND & OTHERS(Vice-Versa)

DATE OF JUDGMENT 04/02/1976

BENCH:
SHINGAL, P.N.
BENCH:
SHINGAL, P.N.
GOSWAMI, P.K.

CITATION:
1976 AIR 1187 1976 SCR (3) 335
1976 SCC (2) 440
CITATOR INFO :
RF 1979 SC 234 (40)
RF 1986 SC 3 (22)
D 1987 SC1577 (27)

ACT:
Representation of People Act 1951-s. 123(5)-Corrupt Practice-Procuring of a tractor and trolley belonging to the candidates wife for carrying voters to the polling station-If corrupt practice.

Words and phrases "procuring" meaning of-
Practice-Amendment of election petition after the period prescribed for presentation-If could be done-Whether obligatory for the election petitioner to examine himself at the trial.

HEADNOTE:

The appellant's election to the State Assembly was set aside by the High Court on the ground of corrupt practice falling under s. 123(S) of the Representation of People Act. The appellant, it was alleged, hired and procured vehicles for the free conveyance of voters. This was however denied by the appellant. The High Court allowed amendment of the election petition by inserting a new sub-paragraph 12(d), stating that the names of the persons who hired or procured the vehicles for carrying the voters to the polling station were given in schedule III(i) of the petition, on the view that the information given was a necessary particular to allege and prove that the vehicle was used for the conveyance of the voters.

It was contended in this Court. (i) that the tractor in which the voters were alleged to have been carried to the polling station, was taken there in some other connection and that though the tractor was in the name of his wife as benamidar. it really belonged to the appellant and, as such, no question of hiring or procuring it, whether on payment or otherwise, arose so as to make it fall within the purview of s. 123(5) of the Act. and (ii) that the High Court had committed a serious error of law in allowing the election petition to be amended after the expiry of the period prescribed for its presentation.

Dismissal of the appeal,

HELD : The finding of the High Court that the appellant procured the tractor with trolley and used it for the purpose of transporting the voters to the polling station and thereby committed a corrupt practice within the meaning of s. 123(5) of the Act is correct. [348E]

(1) (a) There is no justification for contending that there could be no question or occasion for hiring or procuring the tractor because it belonged to the appellant. It cannot be urged that the tractor, which belonged to his wife, must be deemed to belong to the appellant or that it should be inferred that she was a mere benamidar when that was not the appellant's case anywhere. The tractor belonged to the wife of the appellant and was not his own property [341E-F1]

(b) It would amount to "procuring" the tractor if it could be shown that the appellant obtained or got or acquired the tractor from his wife. The dictionary meaning of the word "procure" is "to obtain as by request, loan, effort, labour; get, gain, come into possession of". This is the correct meaning of the word used in s. 12(5). [341G-H]

(c) It is not always possible for an election petitioner to adduce direct evidence to prove that a particular vehicle was hired or procured by the candidate or his agent or by any other person with the consent of the candidate or his election agent, but this can be inferred from the proved circumstances where such inference is justifiable. [348B]

336

Bhagwan Datta Shastri v. Badri Narayan Singh and others A.I.R. 1960 S.C. 200; Shri Umed v. Raj Singh and others. A.I.R. 1975 S.C. 15; Ram Awadesh Singh v. Sumitra Devi and others. [1972] 2 S.C.R. 674; Rahim Khan v. Khurshid Ahmed and others, [1975] 1 S.C.R. 643. Baburao Ragaji Karemore and others v. Govind and others [1974] 2 SCR 429. and Smt. Indira Nehru Gandhi v. Raj Narain. A.I.R. 1975 S.C. 2299; referred to.

(2) It is futile to contend that a new corrupt practice was allowed to be inserted by the High Court's order of amendment. The schedule was an integral part of the election petition and the original election petition contained what was required to be stated by s. 83 of the Act and the amendment was meant to furnish some further particulars in regard to the same corrupt practice. When issue No. 2 was framed by the High Court, the appellant was fully aware that the election petitioners had alleged the use of the vehicles also and that was why he joined issue for the trial of that allegation. [340B-C]

(3) There is no obligation on the part of the election petitioners to examine themselves at the trial in the High Court. The evidence which they were able to produce at the trial could not have been rejected for any such fanciful reason when there was nothing to show that the election petitioners were able to give useful evidence to their personal knowledge but stayed away purposely

[349F]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 775 and 1107 of 1975.

(From the Judgment and order dated the 9-4-1975 of the Allahabad High Court in Election Petition No. 24 of 1974)

N. S. Bindra. K. C. Agarwala. R. D. Uppadhaya and M. M. L. Srivastava, for the appellant in CAs 775/75.

Yogeshwar Prasad and Miss Rani Arora and Bir Bahadur Singh, for the appellant in CA 1107/75.

N. S. Bindra, K. C. Agarwala, R. D. Uppadhaya and M. M. L. Srivastava, for the respondent in CAs 1107/75.

Yogeshwar Prasad, Miss Rani Arora and Bir Bahadur Singh, for respondents 1 and 2 in CAs 775/75.

The Judgment of the Court was delivered by

SHINGHAL, J.-Civil Appeal No. 775 of 1975 has been filed under section 116A of the Representation of People Act, 1951, hereinafter referred to as the Act, by Balwan Singh whose election to the Uttar Pradesh Legislative Assembly from the Sarwan Khera constituency at the general election of 1974, has been set aside by the Allahabad High Court by its judgment dated April 9, 1975. The appellant has been held guilty of committing a corrupt practice under section 123(S) of the Act, and has been disqualified for a period of six years. This election was challenged on several grounds by an election petition filed by respondents Prakash Chandra and Jai Chandra, hereinafter referred to as the election petitioners, who were electors of the constituency. There were several candidates at the election, but the main contestants were appellant Balwan Singh of the Bhartiya Kranti Dal (B.K.D.) who secured 34,968 votes, and Ragunath Singh, respondent No. 2 of the Congress (R) party who secured 31,008 votes. Appeal No. 1167 of 1975 is by election petitioner Prakash Chandra for setting aside the judgment on issues decided against the election petitioners.

337

The allegation regarding the commission of the corrupt practice referred to above was to the effect that the appellant, his workers, agents and supporters, with his consent hired and procured vehicles for the free conveyance of electors. A concise statement of the material facts in that respect was made in paragraph 12 of the election petition. Particulars of the vehicles used for the free conveyance of the electors were given in Schedule III of the petition. The appellant denied the allegation and pleaded in his written statement that none of the vehicles mentioned in Schedule III was either, procured or hired by him or his workers and agents with his consent for the purpose of carrying voters to and from the polling stations and that no such vehicle was "used for the purposes of carrying electors to and from the polling stations on the date of poll". It was also stated that the allegations contained in subparagraphs 12(a), 12(b) and 12(c) were not the facts required by section 83. They were totally vague and lacked material particulars, and were liable to be struck off. The High Court considered that and the other objections and stated in its order dated August 30, 1974, in regard to the objection that the names of the persons who procured or hired vehicles were not given in paragraph 12 or Schedule III, that the counsel for the election petitioner had undertaken to furnish the names. The election petitioners furnished better particulars by adding paragraph 12(d) stating that the names of the persons who hired or procured the vehicles by which the electors were "carried free of cost from their houses to the polling station" on the date of election by respondent No. 1 were given in Schedule III(1). They gave the percentage and residence of the persons named in Schedule III, as also particulars and names of the persons who hired and procured vehicles for the free conveyance of the electors, and the names of the owners of the vehicles. An objection was then taken that such an amendment was not permissible. The High Court rejected that objection by its order dated October 10, 1974, except that

the names of two new persons were not allowed to be inserted in Schedule V, with which we are not concerned.

The High Court framed several issues, including issue No. 2 which was as follows-

"2. Whether the respondent No. 1 himself, or his workers and agents with his consent, hired or procured vehicles for the free conveyance of the voters and whether the vehicles so hired and procured were used for the purpose and , . thereby the respondent No. 1 committed corrupt practice."

After recording the evidence of the parties, the High Court recorded its finding as follows.-

"My answer on issue No. 2 accordingly is that the respondent No. 2 procured tractor 9962 with trolly and hired Jeep UPW 359 and Tractor UTE 5865 with trolly and that the said vehicles were used for free conveyance of voters to Maubasta, Jaganpur and Tigain polling stations and further that the respondent No. 1 thereby committed a corrupt practice under section 123(5) of the R.P. Act."

338

It was in view of that finding that the election petition was allowed with costs, the election of the appellant was declared void, and he was disqualified as aforesaid. That is how appeal No. 775 has arisen. The other appeal No. 1107 has been filed by election-petitioner. Prakash Chandra, as he feels aggrieved against the High Court's findings on the other issues, but Mr. Yogeshwar Prasad has stated that he would not press that appeal. We have therefore only Balwan Singh's appeal for consideration.

It has been argued by Mr. Bindra on behalf of Balwan Singh, hereinafter referred to as the appellant, that the High Court ought not to have entertained the election petition as it was not verified in the manner laid down in the Code of Civil Procedure for the verification of pleadings even though that was the clear requirement of section 83(1)(c) of the Act. We asked the counsel to refer us to any such objection of the appellant in the trial court, and all that he could do was to invite our attention to paragraph 5 of the application dated November 27, 1974. That paragraph however relates to the objection regarding the defective verification of the - affidavit accompanying the election petition, which is a different matter. That is in fact the subject matter of Mr. Bindra's second argument, and we shall deal with it separately. The fact remains that an objection regarding the alleged defective verification of the election petition was not taken in the High Court, and it was not a point at issue there. There is therefore no justification for allowing it to be raised here. It is in fact significant that even though an objection was taken on November 27, 1974 in regard to the verification of the affidavit, no such objection was taken about the verification of the main election petition. It was vaguely stated that verification of the affidavit and verification of the Schedule (i.e. Schedule III) were "at variance", but that was a different matter. In so far as the verification of the affidavit is concerned, it would be sufficient to say that that part of it which related to the commission of the corrupt practice which was the subject matter of issue No. 2 was concerned (Schedule III) it was verified in accordance with the prescribed form (No.25 of the Conduct of Election Rules, 1961) as true to the election petitioner's information received from the persons mentioned in it. It was therefore quite in order.

It may be mentioned that although the High Court

examined the objections of the appellant on two occasions, no objection was taken or pressed for its consideration in regard to the verification of the main election petition, its schedules or the affidavits. An objection was raised in the appellant's application dated November 27, 1974 that the election petition may not be tried because of defective affidavit, but it was rejected by the High Court's order of the same date on the grounds that it was a belated objection, and the allegation of corrupt practice could not be deleted merely because of the defective form of the affidavit. No issue was joined in respect of any such objection and it cannot be allowed to be raised for the first time in this appeal.

It has next been argued by Mr. Bindra that the High Court committed a serious error of law in allowing the election petition to be

339

amended, after the expiry of the period prescribed for its presentation, even though it did not allege that any vehicle was used for the free conveyance of any elector and did not specify the names of the persons who were alleged to have hired or procured the vehicles. It has been urged that as the facts alleged in the petition did not bring out all the ingredients of the corrupt practice, there was no cause of action for trial. Reference in this connection has been made to Samant N. Balakrishna etc. v. George Fernandez and Others(1). Hardwari Lal v. Kamal Singh,(2) Rai Narain v. Smt. Indra Nehru Gandhi and another(3) and Vatal Nagaraj v. R. Dayanand Fagar.(4).

By the amendment in question, the election petitioners had applied for insertion of a new sub-paragraph (d) in paragraph 12 of the petition as follows,-

"The names of the persons who hired or procured the vehicles by which the electors were carried free of cost from their houses to polling station on the date of election by respondent No. 1, his workers and agents with his consent are given in schedule III(i) of the election petition."

Schedule III(i) gave the particulars and names of the persons who hired and procured the vehicles for the free conveyance of electors. The High Court took note of the law that a fresh corrupt practice could not be alleged by means of an application to amend the election petition and, after referring to the decisions in Balwan Singh v. Lakshmi Narain and others(5) and Joshbhai Chunibhai Patel v. Anwar Beg A. Mirza,(6) given before and after the amendment made by Act 47 of 1966, it held that it was the requirement of the law that in addition to proving the hiring or procuring of the vehicles for the free conveyance of any elector to and from any polling station, it was a necessary particulars' to allege and prove that the vehicle was used for - the conveyance of the electors. It then noticed paragraph 9 (iii) of the election petition which stated that the appellant, his workers, agents and supporters with his consent, hired and procured vehicles for the free conveyance of electors and committed corrupt practice as provided under sub-section (S) of section 123 of the Act. It also noticed paragraph 12 which clearly stated that the concise statement of material facts in-relation to the aforesaid ground relating to the procuring and hiring of tractors, jeep and car "for free conveyance of voters to the polling stations from their houses" were given in sub-paragraphs (a) and (b). Those sub-paragraphs clearly mentioned that the vehicles had been hired and procured for the free conveyance of the electors- from their houses to the polling stations on the date of

poll. Reference was also made to Schedule III of the petition for which it was stated in paragraph 12(c) of the petition that the full particulars in regard to the corrupt practice were given in it. That schedule contained the "particulars of vehicles used for

- (1) [1969] 3 S.C.R. 603. (2) [1972] 2 S.C.R. 742.
(3) [1972] 3 S.C.R. 811. (4) [1975] 2 S.C.R. 384.
(5) [1960] 3 S.C.R. 91. (6) [1969] 2 S.C.R. 97.

340

free conveyance of electors on the date of election" and contained not only the place from which the electors were conveyed, the time of conveyance, the name of the polling station. The particulars of The vehicle, but also the names of the electors who were so conveyed and the names of the workers and agents who conveyed them. The schedule was an integral part of the election petition, and the original election petition thus contained what was required to be stated by section 83 of the Act, and the amendment was meant to furnish some further particulars in regard to the same corrupt practice. It is therefore futile to contend that a new corrupt practice was allowed to be inserted by the High Court's order of amendment. It may be pointed out that, as would appear from paragraph 12(c) of the appellant's original written statement to the unamended election petition, he also understood the allegation in the election petition to mean that it related to the use of the vehicles for carrying the electors to and from the polling stations on the date of poll. It will be recalled that the issues were framed on August 30, 1974, before the making of the application for leave to amend the election petition, and issue No 2 clearly raised the question whether appellant Balwan Singh, or his workers and agents with his consent, hired or procured the vehicles for the free conveyance of the voters and whether the vehicles so hired and procured "were used for the purpose." The appellant was therefore fully aware that the election petitioners has, inter alia, alleged the user of the vehicles also, and that was why he joined issue for the trial of that allegation. There is thus no justification for the argument to the contrary.

We have already made a mention of issue No. 2 and the High Court's finding thereon in favour of the election petitioners in respect of tractors No. as UPG 9962 and UTE 5865, and jeep No. UPW 359, for the free conveyance of electors to Naubasta, Jaganpur and Tigain' polling stations. Mr. Bindra has challenged that finding and we shall proceed to examine his arguments in respect of the Naubasta polling station.

The election petitioners alleged in the election petition that the appellant, his workers, supporters and agents hired and procured the vehicles mentioned in Schedule III, with his consent, for the free conveyance of electors from their houses to the polling stations on the date of poll namely. On February 26, 1974. Particulars of the corrupt practice were given in the schedule. It was thus stated. in regard to Naubasta polling station, that electors were conveyed there from Bbimpur and Basehi villages, by tractor No. UPG 9962. in a trolly. It was specifically stated that electors Munshi Lal (P.W.20), Ram Swarup (P.W. 13) and Misri Lal (P.W. 13) of Bhimpur, and Radhelal and Bahulal (P.W.11) of Basehi were thus taken to Naubasta. So also, it was stated that some of the workers and agents who conveyed the electors were Bhavwan Singh (P.W. 11) and Babu Singh of Naubasta, and Maikoo of Bhimpur.

The appellant pleaded in his written statement that the allegation was "totally incorrect and false," and that "none

of the vehicles men -

341

tioned in Schedule III was either procured or hired by the answering A respondent or by any of his workers and agents with his consent for the purposes of carrying voters to and from the polling station, nor any such vehicles were used for the purpose of carrying electors to and from the polling stations on the date of poll." It was not the case of the appellant that tractor No. UPG 9962 was taken to Naubasta polling station in some other connection, or that there was no occasion or question of hiring or procuring it as it was his own property, or that it was otherwise utilised for his election campaign or for some other work. He merely stated that the tractor "was not used in connection with the election."

It has been argued by Mr. Bindra that the tractor really belonged to the appellant, and that his wife was only a 'benamidar' so that there could be no question of "hiring or procuring it whether on payment or otherwise" within the meaning of sub-section (5) of section 123 of the Act. Reliance in this connection has been placed on Surinder Nath Gautam v. Vidya Sagar Joshi(').

That tractor No. UPG 9962 belonged to the appellant's wife Smt. Vimla, has been clearly admitted by him in his own statement in the High Court. In fact, as has been stated, it was not his case in the written statement that this was not so and that it was his own property and there could be no question of hiring or procuring it. A. U. Siddiqui (P.W.2), tax clerk of the office of R.T.O. Kanpur, has proved that the tractor was registered in the name of Smt. Vimla Yadav, wife of appellant Balwan Singh, and that it stood in her name since May 1, 1971. Balwan Singh's statement shows that she was an independent candidate for being coopted as a member of the Zila Parishad. and it appears from the statement of Vijay Kumar Singh (P. W. 5) that she was her husband's counting agent. It cannot therefore be urged with any justification that the tractor which belonged to her, must be deemed to belong to her husband, or that it should be inferred that she was a mere 'benamidar' when that was not the appellant's case anywhere. We must therefore accept it as proved beyond doubt that tractor No. UPG 9962 belonged to the wife of the appellant and was not his own property. There is thus no justification for contending that there could be no question or occasion for hiring or procuring it as it belonged to the appellant.

The word "procure" has been defined in the Century Dictionary to mean "to obtain, as by request, loan, effort, labour, or purchase; get; gain, come into possession of." It has been defined in the Oxford English Dictionary to mean "to gain, win, get possession of, acquire." This in our view is the correct meaning of the words as used in sub-s. (5) of s.123 of the Act. It would therefore amount to "procuring" the tractor if it could be shown that the appellant obtained or got it or acquired it from his wife. As has been stated. the tractor did not belong to the appellant and, in that view of the matter. it is not necessary for us to examine the correctness of the view taken by the Delhi High Court in Surinder Nath Gautam's case (supra).

(1) 35 E.L.R. 129.

342

We shall now examine whether tractor No. UPG 9962 was used for the free conveyance of any elector to or from the Naubasta polling station on the date of the poll, and whether it was hired or procured for that purpose by the appellant or his agent or by any other person with his

consent.

As has been stated, polling in the constituency took place on February 26, 1974. It has been stated by Vijay Kumar Singh (P.W. S) who was the polling agent of respondent Raghunath Singh, that he saw the workers of the appellant bringing voters to Naubasta polling station in the trolley of tractor No. UPG 9962. The tractor, according to him, carried the B.K.D. flag and the posters of that party were pasted on the trolley. When he saw the tractor making the first trip to the polling station, he made an oral complaint to the presiding officer. It took some time for him to come out of the polling station, and by that time the tractor had gone. But when the tractor came for the second time, he made written complaint Ex. 4 about it to Mr. Singh who was the presiding officer, and he made an endorsement on it in his presence. The witness has stated further that the presiding officer came out of the polling station and himself saw the tractor as well as the persons who got down from it. Those persons, according to the witness, were assisted by the workers of the B.K.D. in standing in the queue at the polling booth. "Parchis were given to them from the camp of the B.K.D. which also had that party's flag and posters. According to Vijay Kumar Singh, The tractor and the trolley made only two trips to the polling station, the second trip being at about 3.30 p.m. The witness has stated further that the presiding officer made an enquiry on his complaint, and he must have mentioned the result of the enquiry in his diary. He has stated further that the presiding officer saw the tractor from a distance of about 100 paces and the registration number could be read from that distance.

The witness was cross examined at length, but nothing could be brought out to discredit his testimony, except that both the witness and respondent Raghunath Singh were related to one Shashi Bhushan Singh. That might be the reason why the witness was appointed as the polling agent of respondent Raghunath Singh, but that distant relationship cannot justify the argument that the witness is unreliable and his testimony should be rejected for that reason.

The statement of vijay Kumar Singh has in fact been corroborated in material particulars by the statement of M. P. Singh (P.W. 6) who was an employee of the U.P. Institute of Agricultural Sciences and was the Presiding officer of the Naubasta polling station. He has stated that the aforesaid complaint Ex. 4 was presented to him by Vijay Kumar Singh on February 25, 1974 at 3.30 p.m. and that he made an endorsement to that effect on the complaint. The complaint Ex. 4 was in Hindi but it is not disputed that its English translation reads as follows:

"It is submitted that the workers of Sri Balwan Singh have brought voters in UPG 9962 tractor trolley bearing flag, and the agents of B.K.D. are setting them in queue. It is

343

entirely illegal. I have already spoken to you in this connection. But no action has been taken. Kindly take proper action."

M. P. Singh has stated that he came out of the polling station, as the polling agent said that he should see things for himself, and also because he was aware of paragraph 60 of the "Instruction to Presiding officers" issued by the Election Commission of India. The witness admitted that it was the requirement of the instruction that the Presiding officer of the polling station should forward any complaint filed before him in regard to the illegal conveyance of voters to the sub-divisional and other magistrate having

jurisdiction, with such remarks as he could make on his "own observation and personal knowledge." He saw on coming out of the polling station that a tractor and trolley were standing at a distance of 500 or 600 yards from the polling station. The witness admitted ultimately that the "tractor was standing near the camp of the B.K.D.", he "saw some persons getting down from the tractor and the trolley" and that "those who got down from the tractor were seen by me (him) going towards the B.K.D. Camp." It may be mentioned that the High Court allowed the counsel for the election petitioners to cross-examine the witness as there was some inconsistency in the statement made by him in the Court and the report (Ex. 5) made in his diary. We shall refer to that report in a while. It was then that the witness stated as follows:

"I had read the whole of the complaint (Ex. 4) while going out. Having seen the tractor and the trolley outside the polling station near the B.K.D. camp and having seen the persons getting down the tractor and trolley and moving towards the camp, I concluded that everything contained in the complaint (Ex. 4) was correct, and it was for this reason that I mentioned in the report (Ex. 5) that the facts of the complaint were found to be correct. I stayed outside the polling station for hardly 5 or 6 minutes."

The witness has therefore corroborated the statement of Vijay Kumar Singh (P.W. 5) in several material particulars. He has thus stated that (i) complaint Ex. 4 was presented to him on February 26, 1974 at 3.30 p.m. by Vijay Kumar Singh, (ii) he read the whole of it, (iii) he came out of the polling station to see for himself whether the allegation was correct, (iv) he saw that the tractor and trolley were outside the polling station near the B.K.D. camp, (v) persons were getting down the tractor and trolley, and (vi) they were moving towards the camp. The witness has also stated that he forwarded the complaint to the District Election officer and that he made report Ex. 5 in his diary to the following effect,-

"22-Serious complaint made by the candidates.

The Congress polling agent made a complaint, that B.K.D. workers were conveying voters to the polling station by a tractor and trolley. The fact of the complaint were found to be correct and the complaint forwarded."

344

M. P. Singh was cross-examined in regard to the correctness of the report, but he was unable to deny its genuineness or correctness. His explanation that he merely concluded after seeing what he has stated, that everything contained in complaint Ex. 4 was correct, but did not notice the registration number of the tractor and did not see any flag or posters on the tractor or the B.K.D. agents setting them in queue, cannot be accepted because of his statement that he went out of the polling station as he considered it necessary to see for himself whether the allegation was correct, and also because of his contemporaneous note in the diary that "the facts of the complaint were found to be correct." We have therefore no reason to disagree with the view taken by the High Court that the statement of M. P. Singh and documents Exs. 4 and 5 go to prove the correctness of the statement of Vijay Kumar Singh (P.W. 5).

Mr. Bindra has argued that M. P. Singh could not have seen the registration number of the tractor as it was standing at a distance of 500 or 600 yards from the polling station, and that there is no reason to disbelieve his

statement to that effect. It would be sufficient for us to say in this connection that Vijay Kumar Singh (P.W. 5) has stated that the Presiding officer had seen the tractor from a distance of about 100 paces, and his statement to that effect has not been contradicted by any other witness except M. P. Singh (P.W. 6) who, as has been shown, tried to give an inconsistent statement and was allowed to be cross-examined by an order of the High Court. But even M. P. Singh has stated that he saw the tractor standing near the B.K.D. camp. Section 130 of the Act prohibited canvassing or exhibiting any notice or sign within a distance of 100 metres of the polling station, and Mr. Bindra was unable to refer us to any requirement of the law that it was not permissible for a candidate to locate his camp at that distance. Moreover, if it had not been possible for M. P. Singh to see the registration number of the tractor, he would not have recorded in his report Ex. 5 that the facts mentioned in the complaint (Ex. 4) were "found to be correct." The same is the position in regard to M. P. Singh's statement that he did not notice whether the tractor and the trolley did or did not carry any flag or posters. It is pertinent to point out in this connection that the complaint (Ex. 4) of Vijay Kumar Singh was that workers of the appellant had brought the voters in the tractor trolley, and it would not have been possible for him to "conclude that everything contained in the complaint Ex. 4) was correct" if he had not seen some distinguishing mark on the tractor or the trolley to connect it with the appellant. It has been stated by Vijay Kumar Singh (P.W. 5) that the persons who got down from the tractor trolley went and took "parchis" from the B.K.D. camp outside the polling station. M. P. Singh (P.W. 6) has also stated that those who got down from the tractor were seen by him going towards the B.K.D. camp. It is not the case of the appellant that they were not the electors of the constituency. In fact it would not have availed him or his workers to bring those who were not the electors to the polling station.

The election petitioners stated in the petition that the names of some of the electors who were conveyed to polling station Naubasta

345

were Babu Lal (P.W. 11) and Radhey Lal (P.W. 12) of village A Basehi, and Ram Swarup (P.W. 13), Misri Lal (P.W. 13) and Munshi Lal (P.W. 20) of village Bhimpur. While Babu Lal, Radhey Lal, Ram Swarup and Munshi Lal have been examined by the election petitioners, Misri Lal (P.W. 13) has been examined by the appellant.

We have gone through the statement of these witnesses. Babu Lal (P.W. 11) has stated that a tractor having a trolley came to Basehi on the date of poll carrying the flag and posters of the B.K.D. and that he travelled in it to the polling station along with others including Radhey Lal (P.W. 12), Kunji Lal, Hira, Babbu Prasad and Raghubar Dayal, and that no fare was demanded, or was paid Voluntarily. Radhey Lal (P.W. 12) has stated much to the same effect, except that he was not asked to name the other persons who travelled with him in the trolley. He has however stated that Babu Lal had gone with him in the trolley. Nothing has been elicited in the cross-examination to shake the testimony of these witnesses.

We have also gone through the statements of Ram Swarup (P.W. 13) and Munshi Lal (P.W. 20) of Bhimpur. Ram Swarup has stated that a tractor and trolley carrying the flag and posters having the symbol of "Haldhar Kisan" came to Bhimpur on the date of poll and that he and Munshi (P.W. 20) and

Lallu, Sukhnandan and his sons went in it to the polling station to cast their votes and that they were neither asked to pay any fare for travelling by the tractor to Naubasta nor did they voluntarily pay anything. He has stated that he returned to the village in the same tractor, after casting, his vote. Munshi Lal (P.W. 20) has deposed much to the same effect, and he has stated that Ram Swarup (P.W. 13) also travelled in the tractor trolley along with the other persons named by him. The statements of these witnesses have not been shaken in cross-examination.

As has been stated, Misri Lal (R.W. 13) was also named in the schedule to the election petition as the elector who was conveyed in the tractor trolley, and he has been examined on behalf of the appellant. He has stated that there is a distance of 2 or 2 1/2 furlongs between the "abadi" of Bhimpur and the "abadi" of Naubasta, and that he went on foot to cast his vote at the polling station. He has stated further that the persons living at Bhimpur had gone to the polling station on foot and that it was wrong to say that any tractor come to Bhimpur to transport the voters to the polling station. The appellant has admitted that he knew Misri Lal for 3 or 4 years, and we are unable to think that the High Court erred in rejecting his statement in face of the other evidence to which reference has been made above.

It was specifically stated in Schedule III of the election petition that Bhagwan Singh (R.W.11) and Babu Singh of Naubasta, and Maikoo of Bhimpur were the workers and agents of the appellant who conveyed the electors to the Naubasta polling station. Of these only one Bhagwan Singh (R.W.11) has been examined on behalf of Balwan Singh. He has stated that it was wrong to say that he, Maikoo and

346
Babu Singh brought any voters in tractor trolley from Bhimpur to Naubasta, or that he got any "parchis" distributed to any voters in the queue at the polling station. It may be mentioned that the election petitioners made it clear that Bhagwan Singh was Bhagwan Singh Thakur. Bhagwan Singh (R.W.11) has admitted that there was another Bhagwan Singh in his village. He has stated that he did not see appellant Balwan Singh during the election, in his village, that he had put the flag and poster of the Congress party at his house and that he and his sons worked for the Congress in the election. As against this, the appellant has stated that he did go to Naubasta and talked to Thakur Bhagwan Singh there who was a sympathiser of B.K.D. It therefore appears that Bhagwan Singh (R.W.11) cannot be said to be the worker named in the Schedule of the petition, and nothing can possibly turn on what he has stated.

It will be recalled that Vijay Kumar Singh (P.W.5) who was the polling agent of the Congress candidate at Naubasta had stated in the trial court that he had made an oral as well as a written complaint about the conveyance of voters by the workers of the appellant, to the Presiding officer. The appellant also appointed his polling agent at the polling station, but he has not examined him in rebuttal of Vijay Kumar Singh's statement to that effect.

We have gone through the other evidence which has been led by way of rebuttal of the allegation regarding the use of tractor No. UPG 9962 for the conveyance of electors to Naubasta polling station. We have already dealt with the statements of Bhagwan Singh (R.W. 11) and Misri Lal (R.W.13) and have given our reasons for rejecting them as unsatisfactory. The remaining witnesses, to whose testimony our attention has been invited by Mr. Bindra, are Vijai Pal Singh (R.W.14) and appellant Balwan Singh (R.W.34). Vijai

Pal Singh is a self-condemned witness for whereas he stated that he was the polling agent of Ayodhya Prasad who contested the election as a Congress (o) candidate and did not see any tractor trolly conveying voters to Naubasta polling station although he remained present at the polling station, he admitted under cross-examination that he was not a polling agent at the Naubasta polling station and had made a false statement to that effect. In so far as Balwan Singh (R.W.34) is concerned, it will be sufficient to say that he has admitted that he did not go to Naubasta on the date of the poll. He could not therefore disprove the evidence of the election petitioners in regard to the alleged corrupt practice. He once ventured to state that he came to know on the "next day after polling that (his) tractor had gone to the National Sugar Institute" for transporting "seta" and "patwar", but he qualified that statement by saying that the tractor may have been sent there by his wife and that "seta" and "patwar" were obtained before February 26, 1974. An attempt was made to examine Iqbal Bahadur Dwivedi along with the original gate pass of the Institute, but it was given up by Balwan Singh. He cannot therefore be said to have rebutted the evidence of the election petitioners. It may be mentioned in this connection that although the important role of conveying voters to Naubasta polling station had been assigned to Babu

347

Singh and Maikoo in the election petition, they were not examined in defence.

It may be mentioned that some witnesses of the election petitioners, namely, Babu Lal (P.W.II), Ram Swarup (P.W.13) and Munshi Lal (P.W.20) named certain persons who, according to them, travelled with them to the polling station Naubasta free of cost. Most of those persons were summoned at the instance of the appellant, but they were not examined ultimately, and were given up.

The election petitioners have also led evidence to prove that tractor UPG 9962 was procured by appellant Balwan Singh himself for the conveyance of the electors to the Naubasta polling station. Amarpal Singh (P.W.33) has stated in this connection that he held a diploma in motor mechanism and was running a repairing shop at Rawatpur for motors and tractors. The appellant was known to him and asked him to do the repair work of the vehicles at the B.K.D. office at Rania for Rs. 25/- per day. He has stated further that he went to Rania and worked there for 12 days. One day before polling, the tractor of the appellant was brought to Rania as it had developed some defects. Balwan Singh's wife Smt. Vimla and his driver were present when he was working on that tractor. Ram Swarup Sharma, Babu Singh and the appellant came there at that time and the appellant asked the witness to complete the repairing work as early as possible, and he asked Smt. Vimla to send the tractor to Naubasta with Babu Singh for transporting voters. Witness has stated further that his partner Ramesh was present at that time. Ram Swarup Sharma is dead. Appellant Balwan Singh cited Babu Singh as a defence witness, but gave him up. He did not examine Ramesh. Uma Shankar (R.W.24) was examined to prove that the appellant did not have any election office at the house of Ram Swarup in Rania and no vehicle of the appellant was repaired there, but he has not stated anything about Amarpal Singh, and it is difficult to place - reliance on his statement as he was admittedly a worker of the B.K.D. party in Rania. Rania, according to the witness, had a population of some 3500 persons and it is difficult to believe that the appellant had no office there. The

appellant recorded his own statement to the effect, inter alia, that he did not employ Amarpal Singh for repairing any vehicle and did not give any instruction that Babu Singh - should take the tractor for transporting voters. No reason has how ever been assigned why Amarpal Singh should have tried to implicate the appellant falsely. The trial Judge has placed reliance on his statement, and we see no reason for taking a different view.

Tractor UPG 9962 belonged to the appellant's wife Smt. Vimla, and it was alleged from the very inception, in the contemporaneous report Ex. 4, that it had been used for the conveyance of electors, some of whom were named in the Schedule to the election petition along with the names of the workers and agents who utilised the tractor for the work. It could be expected of the appellant that he would give satisfactory particulars and details about any other use of the tractor on the date of the poll if that was within his special knowledge, but he has not done so. On the other hand, as has been

348

shown, his attempt to prove that the tractor had been sent to the National Sugar Institute met with dismal failure. His wife Smt. Vimla did not even appear as a witness and no attempt was made even to examine the driver of the tractor although the appellant has stated that tractor UPG 9962 was driven by a driver whose name was Rangilal.

It is not always possible for an election petitioner to adduce direct evidence to prove that a particular vehicle was hired or procured by the candidate or his agent or by any other person with the consent of the candidate or his election agent, but this can be inferred from the proved circumstances where such inference is justifiable. Reference in this connection may be made to the decisions of this Court in Bhagwan Datta Shastri v. Badri Narayan Singh and others(1) and Shri Umed v. Raj Singh and others(2). In the present case, it has been proved by clear and reliable evidence that tractor UPG 9962 was used for the conveyance of electors to and from the Naubasta 1' a polling station, and that it was so used by the workers of the appellant. Then there is the further fact that the voters were conveyed free of cost. It has also been proved that the tractor belonged to the appellant's wife and he could not succeed in his effort to prove that it was used elsewhere or for some other purpose. In these facts and circumstances, it would be quite permissible to draw the inference that the tractor had been procured, by the appellant for the free conveyance of the electors.

For the reasons mentioned above, we have no doubt that the finding of the High Court that appellant Balwan Singh procured 'tractor No. UPG 9962 with trolley and that they were used for the purpose of transporting the voters to the Naubasta polling station, and he thereby committed a corrupt practice within the meaning of' section 123(5) of the Acts. is correct and must be upheld. In view of this categorical finding it is not necessary for us to examine the allegation regarding the hiring or procuring of tractor No. UTE 5865 and jeep No. UPW 359 for the free conveyance of electors to two other polling stations.

It may be mentioned that in arriving at the above finding we have ' taken due note of the view expressed by this Court in Ram Awadesh Singh v. Sumitra Devi and others(8) in regard to the generation of factious feelings during elections and their continuance even after the election enabling the parties to produce a large number of witnesses some of whom may be seemingly disinterested, and

the view expressed in *Rahim Khan v. Khurshid Ahmed and others*(4) that an election once held should not be treated in a light-hearted manner and' the court should insist on clear and cogent testimony compelling it to uphold the corrupt practice alleged against the returned candidate. So also, we have noticed the view expressed in *Baburao Ragaji Karem ore and others v. Govind and others*(5) that the Court should

(1) A.I.R. 1960 S.C. 200. (2) A.I.R. 1975 S.C. 43.

(3) [1972] 2 S.C.R. 674. (4) 19751 S.C.R. 643.

(5) [1974] 2 S.C.R. 429.

349

examine the evidence having regard to the fact that where the electorate has chosen their candidate at an election, their choice ought not to be lightly upset. We have also taken notice of the view expressed by Ray C.J. in *Smt. Indira Nehru Gandhi v. Raj Narain*(1) that in an election contest it is the public interest, not the parties' claims, which is the paramount concern. Mr. Bindra has placed consider "able reliance on these decisions. But, as has been shown, the finding of the High Court regarding the aforesaid corrupt practice is based on clear, cogent and convincing evidence and there is no justification for interfering with it.

Mr. Bindra has laid much stress on the fact that the appellant was successful at the election to the U.P. Legislative Assembly from another constituency in 1957, but his election was set aside on the round, inter alia, that he and/or his election agent and/or other persons with his consent, had committed corrupt practice, including the corrupt practice of hiring a tractor for the conveyance of electors. He has argued that in view of this Court's decision against him in *Balwan Singh v. Shri Lakshmi Narain and others* (supra) he could not possibly have taken the risk of committing another similar corrupt practice at the election in question. The argument is based on mere conjecture and cannot disprove or rebut the clear, cogent and reliable evidence on which the appellant has been held guilty of committing the corrupt practice in this case.

Mr. Bindra tried to argue further that the High Court committed an illegality in setting aside the appellant's election without finding that the result of the election had been materially affected thereby. The argument is misconceived, for it is not the requirement of section 100(1) (b) which has been found to be applicable to the corrupt practice in question, that the High Court should declare the election of the returned candidate to be void only if the result of the election has r been materially affected by it.

Another argument of Mr. Bindra was that the corrupt practice in question should not have been found to have ben committed as the election petitioners did not examine themselves during the course of the trial in the High Court. There was however no such obligation on them, and the evidence which the election petitioners were able to produce at the trial could not have been rejected for any such fanciful reason when there was nothing to show that the election petitioners were able to give useful evidence to their personal knowledge but stayed away purposely.

In the result, the appeal (Civil Appeal No. 775 of 1975) filed by Balwan Singh fails and is dismissed with costs. The cross-appeal (Civil Appeal No. 1107 of 1975) is dismissed as not pressed, but without any order as to the costs.

P.B.R.

Appeal dismissed.

(1) A.I.R. 1975 S.C. 299.
8-L522SCI/76
350

JUDIS