
(1964) 03 AP CK 0014
In the Andhra Pradesh High Court
Case No : Special Appeal No. 34 of 1963

D. Muralidhar Reddy

APPELLANT

Vs

Paga Pulla Reddy and Another

RESPONDENT

Date of Decision : 04-03-1964

Acts Referred:

Representation of the People Act, 1951 — Section 100(1), 123, 123(1), 123(5), 123(7)

Citation : AIR 1964 AP 530

Hon'ble Judges : P. Chandra Reddy, C.J.;Kumarayya, J

Bench : Division Bench

Advocate : O. Chinnappa Reddy and C. Padmanabha Reddy, for the Appellant;
A.G. and B.V. Subbarayudu, for the Respondent

Final Decision : Allowed

Judgement

Chandra Reddy, C.J.—This is an appeal against the judgment of the Election Tribunal, Hyderabad, setting aside the election of the appellant, who was returned to the Andhra Pradesh Legislative Assembly in the general elections held in February 1962 from the Alampur Constituency (Mahaboobnagar District).

2. The seat was contested by three candidates including the appellant and the respondents but the contest was kept between the appellant and the respondent. The polling was held on 22-2-1962. The appellant obtained 20,715 valid votes as against his nearest rival, the respondent, who secured 20,548 valid votes, the margin between the two being only 167.

3. The respondent presented a petition u/s 81 of the Representation of the People Act, 1951 challenging the validity of this election and for a declaration that he was duly elected inter alia on the ground that the appellant got a drama "Satya Harischandra" enacted on the 15th February 1962, a week before the polling day, "A one of the villages within this constituency, to induce the electors to cast their votes in his favour, that he procured a lorry and hired bullock-carts for conveying the voters to some of the polling booths at Alampur and that he

got a well for drinking water dug for the use of the Harijans of Budamarsu through the President of the Panchayat Samithi of Manopad with the object of influencing those voters all of which constitute corrupt practices within the terms of Section 123(1)(b) of the Representation of the People Act and that he arranged meetings of his election campaign at several places some of which were addressed by the then Chief Minister, within twenty four hours before the commencement of the poll and this violated the provisions of Section 126 of the aforesaid Act.

4. The petition was opposed by the appellant, who denied the commission of "corrupt practices" as also the holding of the meetings on 21-2-1962 "within twenty four hours before the commencement of the poll".

5. The Election Tribunal, while holding against the respondent on all the issues, avoided the election, in the view that the appellant was guilty of a corrupt practice by offering gratification to the voters of Rajoli in the shape of free entertainment. He thought that the drama "Satya Harisehandra" was staged "for the purpose of entertaining the voter public with a view to capture their imagination and gain popularity" and that the illiterate voter public, naturally having enjoyed the hospitality of the appellant to a free show, would certainly be swayed by enthusiasm to favour a person who had given them something by way of a free entertainment. It is this conclusion of the learned Judge that is impugned in this appeal filed by the successful candidate.

6. It is urged on behalf of the appellant that the learned Judge failed to appreciate that the drama was arranged only as an usual incident of electioneering to attract the members of the public to the meeting. On the other hand, the stand taken by the respondent in this appeal is that this entertainment constituted a corrupt practice since that its purpose was to stimulate his prospects. Otherwise, a drama for election propaganda had no meaning. The decision of the Tribunal was also sought to be sustained on grounds which did not find favour with it, which will appear hereunder.

7. The serious question to be determined by us in this appeal is as to the effect of the drama. Since it is not disputed that "Satya Harischandra" was put on boards at Rajoli on the night of 15-2-1962, it is unnecessary for us to canvass the evidence on this aspect of the matter. It is also needless for us to consider whether a sum of more than Rs. 375/- was spent for the drama, as the respondent gave up that contention. The contention that an additional expenditure of Rs. 600/- or Rs. 700/- was incurred by way of payment to actors which did not find a place in the election expenses, was also given up obviously for the reason that the limit of expenditure prescribed for the assembly elections in the Andhra Pradesh State would not be exceeded, even if this sum was added to the total expenditure which was only Rs. 4,592-54 nP.

8. Before we deal with the arguments advanced on either side on this question, we can profitably extract the terms of Section 123 of the Representation of the

People Act, 1951, in so far as it has a material bearing on this enquiry.

"Section 123. Corrupt practices:- The following shall be deemed to be corrupt practices for the purpose of this Act.

(1), "Bribery", that is to say,--

(A) any gift, offer or promise by a candidate or his agent or by any other person with the consent of a candidate or his election agent of any gratification, to any person whomsoever, with the object, directly or indirectly if inducing. . . .

a)xx xx x

b) an elector to vote or refrain from voting at an election.

xxxxx"

9. The crux of the problem in this case is whether the entertainment is a gift or a gratification within the connotation of clause (A) of the section. It is urged on behalf of the respondent that the drama arranged on the night of the 15th February 1962 fulfills this definition and that even if the entertainment cannot be regarded as directly inducing the electors to vote for the appellant it was intended to indirectly influence them.

10. The term "indirectly" takes in any good effect that is likely to be produced by the term, continued the learned Advocate General. He added that any act by a candidate or his agent which increases his popularity would amount to indirectly inducing the electors to vote for him. Since in this case the drama was shown to the villagers to please them and was conceived in the interests of the promotion of his success, it is hit by Sub-section (1) of Section 123. The definite object of the organisers of this drama was to attract persons in large numbers and make them understand that it was under the auspices of the Congress party and as such it is covered by Section 123(1) proceeded the arguments of the learned Advocate General.

11. In support of the proposition that entertainment in any form would amount to treating and treating intended to secure general popularity which would tend to influence the voters in favour of a candidate is a corrupt practice, the learned Advocate-General relied on three of the decisions of the English Courts.

12. In the Wigan case 1881 4 M & H 13, the impugned election was held at a time when distress prevailed owing to a strike. On the polling day, break-fasts-bread and cheese were distributed amongst the poor, Bown, J. (as he then was) opined that this act of charity at the election time constituted corrupt treating and as such it vitiated the election. The learned Judge, In the course of the judgment remarked:

"Charity at election times ought to be kept by politicians in the background. No doubt, the distress was great in Wigan at this time, and there was probably many a fireless and breadless house throughout the town; but the persons who

ought to have relieved the distress were not the politicians of Wigan : they ought to have stood aloof; they had another duty to discharge on that day, and they could not properly discharge both duties at the same time. In truth, I think it will generally be found that the feeling which distributes relief to the poor at election time, though those who are the distributors may not be aware of it, is really not charity, but party feeling in the steps of charity and mimicking her gait."

13. Another case called in aid by the learned Advocate General is East Division of the Borough of Nottingham 1911 6 M & K. 292. The facts of this case are these. In East Nottingham, there was an election on 5-12-1910. At that time, there was a great distress in that constituency. When this came to the Knowledge of the respondent, who was a sitting member, in the beginning of that year, having determined to alleviate this distress from real motives of charity, he gave Instructions to those whom he employed to give charity to all the deserving and necessitous cases without regard to the politics or to the creed of the recipients and without regard to whether they were or were not voters. But he determined that this charity should, as a rule, be confined to his own constituency and recognised that it would bring him popularity which would be likely to assist him at a future election. In a short time, the applications became so numerous that he handed over the cases to his solicitor, who sent cards to the applicants with a note that in view of the general elections the case should stand over for the present.

14. His election was questioned on the allegation of bribery by his agent. The Court refused to declare the election void, although the recipients knew that the donor was the member and the probable candidate at the next election. In the course of judgment, Channel J. observed as follows:

"..... what one has got to look at is what e think is the governing principle in the mind of the man; that is to say, that if we think this was real charity, and that Incidentally, as it were, he also saw and was willing and had the intention of tailing advantage of the fact that there was popularity to be gained by it, and therefore that there were votes to be gained by it. . . . that if the real governing thing in his mind was the charity, that that would not be illegitimate. On the other hand, if the real thing was to get popularity to debauch the constituency as Mr. Foote puts it, and to do it under the name and the pretence of charity, why then, of course, that would be bribery of a very serious kind."

15. It, is urged by the learned Advocate General that the instant case falls within the second category mentioned in this passage.

16. We now turn to what is called the Kingston case 1911 6 M &H. 372. There, the respondent was a member for the borough for a number of years. The election that) was put in issue took place in the early part and summer of 1910. He communicated to his friends his desire to commemorate his twenty-fifth anniversary. On the suggestion of a friend of his, on 9th November 1910, sweets were distributed amongst children in Unboxes with the representation of the

respondent on the outside and a statement that it was a gift. Coal also was distributed amongst the poor people within the constituency. The elections took place on the 7th and 12th November and the respondent was elected to the borough:

17. The election was set aside on the ground of bribery. Ridley J. said :

".....it is to be held to be a corrupt practice if a man does a thing which must produce an effect upon the election which is contrary to the intention of the Act of Parliament--an improper thing, influencing the electors in a manner contrary to the intention of the Act of ParliamentNow, assume for the moment that a man forms a design which at the time is unobjectionable because no election is in prospect, for that is the point; yet if circumstances alter and an election becomes imminent he will go on with that design at his risk, and if he does so he will be liable to be found guilty of corrupt practices; that is to say that he has done a thing which must produce an effect on the election contrary to the intention of the Act of Parliament."

18. The learned Advocate General also relied on the following passage in Schoffeld's Parliamentary Elections (Third Edition) at p. 382:-

"Where refreshments were deliberately provided to influence an election, the courts find that such conduct was illegal at common law, and that corrupt treating was an offence at common law quite independent of any statute. Everything is corrupt which has a tendency to influence a man's mind improperly."

19. A passage to a similar effect contained in Halsbury's Laws of England (Third Edition) occurring at page 221 was also placed before us.

20. On the basis of these decisions and the passage extracted above, it is submitted by the learned Advocate General that the purpose of the drama being to increase his popularity and thus to further his chances of success, the appellant must be held to have committed corrupt practices.

21. We are unable to accede to this proposition. For one thing, the rulings cited above are distinguishable in that it was found in all those cases that the governing principle in making the charity was to induce the voters to cast their votes to him. Further, in the Nottingham's case 1911 6 M & H. 292, the Court declined to nullify the election, although the persons to whom the charity was distributed knew that the giver thereof was the prospective candidate.

22. Secondly, the English decisions on the subject are most conflicting as stated in the Rogers on Elections at page 306 (Second Volume). The divergent views to the two sets of cases have been noted in this book,

23. In Hexham Case 1892 4 M & H. 143 (147) Cave J. remarked :

"If people are called together for the purpose of exciting their political enthusiasm, and if the so-called treating is a mere incident of such a gathering, it

is not an offence within the Act. It does not make it corrupt treating that a roof or warmth is provided for the meeting, nor is it necessarily corrupt treating if the persons attending the meeting are provided with some sort of refreshment. But if they are gathered together merely to gratify their appetites and so to influence their votes, then it is treating within the Act."

In the same passage, the following test propounded by Vaughan-Williams, J. in *Rochester Case, Barry and Varrali v. Davis* 1892 5 OM & H. 156 (157) is quoted.

"By corrupt treating, I understand treating with a view to influence voters; either to influence voters; to vote for the candidate or to abstain from voting against him."

24. In the *Windsor case* (1874) 2 M & H 88, it was decided that the distribution of money by the returned candidate among his tenants, some of whom were voters, for buying coals, beef and tea long before the election, was not bribery, although he admitted that when he had made the gift he had the election to a certain extent in his view. Bramwell B. remarked :

"It is certain that the coming election must have been present to his mind when he gave away these things.

He is not to refrain from doing that which he might legitimately have done on account of the existence of this motive

If the respondent had not been an intending candidate for the borough, and yet had done as he has done in respect of these gifts, there would have been nothing illegal in what he did, and the fact that he did intend to represent Windsor and thought good would be done to him and that he would gain popularity by this does not make that corrupt which otherwise would not be corrupt at all."

25. The learned Judge stated in *Stroud case* (1874) 2 OM and H 181 (184), that it was not the intention of the legislature to prevent an act being done to a person, and good itself, merely because it had a tendency to make that person favourable to the person doing it.

26. It is clear from the statement of law contained in these decisions that every act that gains popularity to a candidate or that would produce a good effect upon the electorate or which might increase his chances could not be described as a corrupt practice. Whether an act amounts to a corrupt practice or not depends upon the governing motive.

27. We may at this juncture refer to the definition of "treating" as given in *Baker's Law of Parliamentary Elections*.

" "Treating" is a corrupt practice, and may be defined as getting at voters through their mouths and through their stomachs; supplying them with food and giving them drink. Treating is intended to mean, and it does, mean, the corrupt giving of meat, drink, or entertainment to the persons in order to influence their votes. And if a candidate does that, by himself or by his agent, and should he be

returned at an election that follows thereon, the election will be void."

28. According to the learned author, treating is prima facie innocent and it would not be corrupt unless it is given in such circumstances that may lead the Tribunal to conclude that it is corrupt. It may be administered for the purpose of influencing the voters. Thus, treating should be assumed to be innocent unless it is established that it was done with a corrupt motive.

29. To a like effect is the statement of law contained in the Rogers on Elections (Volume II). It is interesting to note that it is only an appeal to the mouths and stomachs that was considered to be treating in all the cases noticed above. Our attention was not drawn to any English case in which it was held that treating could also be by way of getting at voters through the ears and eyes. But a ruling of one of the Tribunals reported in Doabia's Election cases has extended it to a form of musical entertainment.

30. In Sarup Narayan v. Raja Durga Narain Singh, 1 Doabia's Election Cases 383, it was ruled that the performance of "Nowtanki", a kind of entertainment, to please the voters was an instance of a corrupt practice. The Election Tribunal held that treating comprehended an entertainment though the voters were not approached through their mouths and stomachs, but the entertainment was by other senses, such as eyes and ears and that "Nowtanki" was an entertainment and hence a treating. It is highly doubtful whether it lays down a correct principle. Assuming that this ruling contains sound law, this is not of much assistance to the respondent for the reason that it was found as a fact that it was intended to induce the electors to vote for the successful candidate,

31. As already observed above, to bring an act within the ambit of Section 123, it must be made out that the treating was administered "with the evil feelings and evil intentions" of procuring their votes. Thus, even if the drama is within the connotation of treating, if it was not got up with the sole object of influencing the voters, it cannot be regarded as a corrupt practice. It should be remembered that some kind of attraction is needed to get the people attend a meeting.

32. In this context, the following passage (at page 122) from Baker on the Law of Parliamentary Elections is pertinent:

"It requires some sort of attraction, however, interesting a speaker may be, to get people to come and listen to his views upon subjects which are supposed to interest politicians, but do not interest everybody."

It is to be remembered that this drama was arranged as a part of election campaign and that being the position it is difficult to view this as an inducement to the electorate to vote for the appellant.

33. In this connection, we may cite the following passage from the Corpus Juris Secundum (Vol. 29): (Section 216) (vide page 318).

"Treating electors to intoxicating liquor or other refreshment with intent to

influence their votes may fall within the prohibition of applicable corrupt practices acts, but the furnishing of entertainment or refreshment to voters will not constitute a corrupt practice where it is not shown that this was done with intent to influence their votes, nor where it is regarded as merely one means of advertising a candidacy."

34. Reliance is placed in support of the latter part of the statement of law on *Ky Bargo v. Tedders* 71)S.W. II. 660, 254 ky. 341, where it was held:

"Chartering theatre and putting on free show at which the candidate presents his claims before the voters some days before election is simply a means of advertising his candidacy and does not constitute a violation of the Corrupt Practice Act."

35. The proposition is similarly stated in the Halsbury's Laws of England (Third Edition), Vol 14 at page 222, says the learned author:

"Where refreshments are a mere incident of a political meeting, there is no offence: but if persons are gathered together merely to gratify their appetites and so influence their votes, then it is a corrupt treating. It is not necessarily, corrupt, however, to attract people to meetings by offering refreshments of a moderate kind."

36. That entertainments of this kind do not attract the applicability of Section 123 of the Representation of the People Act is vouched by a decision of Election Tribunals in *Doabia's Election Case* (Vol. II).

37. In *Sambu Nath Mahanti v. Gobinda Prasad Singh*, 2 Doabias Indian Election Cases 411, it was ruled that a musical entertainment may not be a corrupt practice. It was held in *Braj Bhushan and Another Vs. Baja Anand Brahma Shah and Others*, , that distribution of sweets to children who participated in the procession organized on behalf of the successful candidate on the eve of elections would not amount to bribery and that consequently it would not constitute a corrupt practice. The learned Judges who decided that case observed that the object behind this was at the most to make himself popular in his constituency and that it would not be a corrupt practice.

38. Bearing these principles in mind, if we judge the aim and object of the drama staged in the instant case, we cannot but reach the conclusion that it was only to serve as an attraction to the people of the village (Rajoli) to come and attend the meeting.

39. Here, we may notice what the respondent has stated in his petition. In paragraph 5 of the petition, it was inter alia recited:

"..... that the said entertainment was made a part of the election propaganda of respondent No. 1 and the public were admitted free. The respondent No. 1 has issued alongside with the advertisement of the drama separate leaflets notifying that before the drama would commence, Congress leaders would address the

audience on 15-2-1962."

40. We shall presently advert to the contents of the pamphlets issued on the occasion.

41. In reply, the appellant alleged that such an entertainment did not amount to a gratification to induce the voters to vote for him.

"..... It is common practice by all parties and candidates that either before or after the entertainment the people assembled are addressed on the policy of the programme of the party arranging the entertainment and meeting and also to ask the people generally to support their party candidates."

42. Thus, it is not in dispute that this drama was a part of the election campaign of the appellant.

43. That being the position, could it be postulated that it was a gratification directly or indirectly to influence the electors to vote for the appellant?

44. In this context, we cannot overlook the fact that significantly none of the witnesses for the respondent stated that any of the persons regarded the drama as an inducement to vote for the appellant. Nor did they testify to the intention of the appellant being to influence the voters.

45. The learned Advocate-General for the respondent tried to overcome this difficulty by relyine on the contents of the pamphlet, Ex. A-21, which invited the people of the Rajoli village to attend the drama of "Satya Harischandra" to be staged at about 10 P.M. on 15-2-62. it was recited inter alia therein:

"If Nehru Government is to be strengthened, your votes should be cast in favour of the Congress."

46. It also contained the election symbol of the Congress party -- two bullocks and one yoke.

47. It is urged that the combined effect of these things is to influence the voters to vote for the Congress candidate through the free show. Stress is also laid, in aid of this contention, on the fact that the photographs of the main actors and actresses were printed on that pamphlet. The statements in Ex. A-22, which was issued along with Ex. A-21 and which announced that there would be a meeting at 8-30 P.M. on 15-2-1962 before the commencement of the drama at which Sri Narothona Reddy and some others would speak, were also called in aid to substantiate the abovesaid arguments.

48. We fail to see how all these factors - either ollectively or individually -- would lead to the conclusion that the drama was staged for influencing the electorate to vote for the appellant. As already mentioned, it was the case of the respondent that this entertainment was an integral part of the election campaign or propaganda of the appellant. We hare already referred to the plea of the appellant that it is usual to arrange such dramas in the election campaign. That

this is so is borne out by Ex. A-22 itself which says that there would be a public meeting in connection with the election before the staging of a drama and by what is stated in Ex. A-21 that after the performance some leading members of the Congress Party would address the gathering. It is pertinent to note that it was mentioned in the pamphlet, Ex. A-21, that after the show was over a meeting would be addressed. These circumstances are clearly pointers in the direction of the play having been enacted to attract the people of the Rajoli village to the meeting.

49. It is apposite to quote here what the Election Tribunal has observed:

"The drama is an attraction for the villagers to congregate or assemble and, therefore, the meeting and drama were made the forums of the election campaign."

If really the drama was to serve the purpose of an attraction for assembling at the meeting, surely it would not amount to a corrupt practice.

50. The essence of a corrupt practice is the object to induce the electors to vote through treating, etc. That element is lacking in this case.

51. Further clear and positive proof is required to make out a case of corrupt practice. In the absence of affirmative and unequivocal evidence, the allegations of corrupt practices have to be rejected as baseless and the election upheld. It cannot be overlooked that it is for the person who impugnes the election on the ground of corrupt practices to establish the commission of such practices, beyond a reasonable doubt. Since, allegations as to corrupt practices within the contemplation of Section 123 of the Representation of the People Act are of a quasi-criminal character, very strict proof is necessary to bring home the charge as in a criminal case.

52. This principle finds support from several of the decided cases. It was laid down by the Supreme Court in *Harish Chandra Bajpai Vs. Triloki Singh*, , that the charge of corrupt practice being quasi-criminal in nature, the allegations relating thereto should be sufficiently clear and precise to bring home the charge to the candidate.

53. Another illustration of this principle is *R. Narasimha Reddy and Another Vs. Bhoomaji and Another*, . To a like effect is *Jayalakshmiddevamma Vs. Janardhan Reddy*, and *Braj Bhushan and Another Vs. Baja Anand Brahma Shah and Others*, , which held that corrupt practice was more or less of the nature of a criminal charge and, therefore, strict proof was required to bring home the charge. See also *S. Kandaswami Vs. S.B. Adityan and Others*, .

54. Judged in the light of these principles, we must hold that the evidence is wholly insufficient to justify the conclusion that the drama was put on boards with corrupt motives and as such would fall within the prohibition of Section 123 of the Representation of the People Act. We find the material on record does not warrant a fair inference that the appellant was guilty of corrupt practices.

55. It was then urged on behalf of the respondent that the onus of proof should not be so strict in a matter like this as in a criminal case, since no moral turpitude is involved, where the treating consists in entertaining the voters. In support of this contention, the learned counsel relied on the following observations of Blackburn, J. in the Bewdley case (1869) 1 O.M. and H. 16, as extracted by Schofield in his Parliamentary Elections (Third Edition) at page 384:

"..... corruptly there does not mean wickedly or immorally or dishonestly, or anything of that sort, but with the object and intention of doing that which the legislature plainly means to forbid."

56. We cannot accede to this argument. The absence of moral turpitude would not make any difference as to the burden of proof. It is only in dealing with cases of corrupt practice that the principle was enunciated in the rulings extracted above. In this regard, we cannot ignore that penal consequences flow from a candidate being found guilty of corrupt practices. Be that as it may, as it partakes of a quasi-criminal character, the standard of proof is not in any way different from that required in regard to a criminal charge. In this state of material on record, we have to exclude the corrupt intention. The two pamphlets, which formed the bed-rock of the charge of corrupt practice, do not yield sufficient basis for that charge. In these circumstances, we have to find the issue in favour of the appellant, in disagreement with the Election Tribunal.

57-66. This leads us to the point whether the appellant or his agent procured lorries for conveying the electors to one of the polling booths at Alampur. (After considering the evidence, the judgment continues as under:) We feel that the probabilities are against the persons found in the lorry having been taken in the same lorry to Alampur that morning after the incident mentioned above for casting their votes in favour of the appellant. Here again the rule as to the onus of proof comes into play. The material placed by the election petitioner-respondent on this controversy is too scanty to substantiate the charge of corrupt practice. However this need not detain us any longer, as this does not make much difference to the ultimate result of the case.

67. Assuming that the voters were carried to the Alampur polling station that day, it would not vitiate the election, unless it is brought home to the successful candidate that this was done either with his consent or with that of his agent.

68. In this context, we have to read Section 123 of the Representation of the People Act which deals with procuring the vehicles for conveyance, of the electors. That section in so far as it has a material bearing on this enquiry reads :

"S. 123. The following shall be deemed to be corrupt practices for the purposes of this Act:

(5) "The hiring or procuring, whether on payment or otherwise, of any vehicle or vessel by a candidate or his agent or by any other person with the consent of a candidate or his election agent, for the conveyance of any elector (other than the

candidate himself, the members of his family or his agent) to or from any polling station provided u/s 25 or a place fixed under Sub-section (1) of Section 29 for the poll :

*****"

69. It is plain from the language of this sub-section that it is only when the hiring or procuring is done with the consent of the candidate or his election agent that would constitute a corrupt practice. It has not been established that the hiring or procuring of the lorry in the present case was done with the consent of the successful candidate. All that was suggested on behalf of the respondent was that a particular lorry was utilised. This lorry at the relevant time, was owned by one Ellareddi. it may be stated here that the arguments proceeded on the assumption that at the time of the general elections that Chandrasekhara Reddi had nothing to do with the lorry and that it really belonged to Ellareddi. So, this sub-section cannot be said to have been offended against, unless Ella Reddi could be described as the agent of the appellant.

70. At the outset, it must be mentioned that none of the witnesses for the election petitioner (respondent) attempted to attribute consent to Ella Reddi for the use of the lorry for the said purpose. Even otherwise, we do not think that the instant case could attract the operation of Sub-section (5). The learned Advocate-General sought to bring, Ella Reddi within the connotation of "agent" as defined in Explanation 1 to Sub-section (7). We are not inclined to accept his argument. This explanation is appended to Sub-section (7) and hence it cannot be read as part of Sub-section (5). That apart, this is wholly inapplicable to a case like the present one. In this case, what was attempted to make out was that Ella Reddi was a worker for the appellant. Could that "constitute him an election agent, a polling agent, and any person who is held to have acted as an agent in connection with the election with the consent of the candidate as envisaged by this Explanation? It is not the case of the respondent that Ella Reddy was either the election agent or the polling agent of the appellant. But it was argued that a supporter of a candidate would fulfil the last part of the Explanation. We are not disposed to agree with this argument.

71. Even assuming for the sake of argument that he could be described as an agent in connection with the election, still that would not suffice to bring the matter within the scope of the last part. it should further be shown that he acted as the agent with the consent of the candidate. The respondent has failed to establish that the appellant consented to Ella Reddi working as his agent in connection with the election. In these circumstances, it is difficult to assent to the contention that the alleged use of the lorry of Ella Reddi for the object indicated above would tend to avoid the election of the successful candidate. For these reasons, we must hold that the respondent has failed to sustain the judgment of the Tribunal on this ground.

72-78. (His Lordship then considered the evidence regarding other allegations of

corrupt practice and after rejecting them, proceeded as under:-)

79. We are now left with the contention that by holding a meeting on 21-2-1962 at which Mr. Sanjeevayya, the then Chief Minister, spoke, the successful candidate had infringed the provisions of Section 125(1) of the Representation of the People Act rendering the election void. The fact that a meeting was held at about 7 A.M. on 21-2-1962 i.e., a day before the polling date and that it was addressed by Sri D. Sanjeevayya is not in dispute.

80. But does this lead to the result contended for by the learned Counsel for the respondent? Since the answer to this question turns upon the Section 126 of the Representation of the People Act, we may profitably extract it here. Section 126(1) enacts:

"No person shall convene, hold or attend any public meeting within any polling area within twenty-four hours before the date of commencement of the poll or on the date or dates on which a poll is taken for an election in that polling area."

81. This section prohibits the convening, holding or attending any public meeting within twenty four hours before the date of commencement of the poll. The argument based on this section is that no meeting could be held the day previous to the polling date. This submission did not find favour with the Election Tribunal, which opined that the expression "within twenty four hours before the date of commencement of the poll" was to be equated to "within twenty four hours before the time of commencement of the poll".

82. This decision of the Tribunal is challenged before us by the learned Advocate General, He says that the legislature has advisedly used the expression "twenty four hours before the date of the commencement of the poll" and not "before the commencement of the poll" and that the interpretation placed upon it by the Tribunal rendered otiose the expression "the date". According to him, any meeting held after 12 mid night of the 20th February i.e., the early hours of the 21st would vitiate the election.

83. The conclusion of the Tribunal sought to be upheld by the learned counsel for the appellant by referring to the decision of the Election Tribunal in *Damodardas Shah v. Narso Balakrishnan Chandrachud*, Doabia's Ele. Cases 141. The controversy that arose there was whether an order countermanding the poll on the death of candidate after mid-night immediately before the date of poll was a legal one or not. In the consideration of that question, it was ruled by the Election Tribunal of the then Bombay State that the day of the poll commenced from the time when the poll was actually begun. This ruling does lend support to the conclusion of the Tribunal and to the argument of the learned counsel.

84. But, we are relieved of the necessity of pronouncing upon this point, having regard to the fact that the infraction of this section by itself would not render the election void. It must be further established that the result of the election has been materially affected. An election could be declared to be void only on

grounds mentioned in Section 100 of the Representation of the People Act. It is Clause (d) of Sub-section (1) of Section 100 that governs the present case. Section 100 in so far as it bears on this enquiry, postulates :

"(1) Subject to the provisions of Sub-section (2), if the Tribunal is of opinion.....

(d) that the result of the election in so far as it concerns a returned candidate, has been materially affected.....

the Tribunal shall declare the election of the returned candidate to be void."

85. The question for consideration is whether the result of the election has been materially affected. The learned Advocate General for the respondent invites us to draw that inference from the circumstances that the margin of votes is very small and that in most of the other polling booths the respondent secured more votes than the appellant.

86. We are not disposed to accede to this submission. It would be extremely hazardous to hold that this difference in votes between the two candidates was caused by the then Chief Minister (Sri D. Sanjeevayya) addressing the meeting on the preceding day. We find it difficult to connect the result of the election with the non-compliance of the provisions of Section 126 of the Representation of the People Act. The fact that the majority was small does not ipso facto lead to the inference that the meeting was responsible for the difference of votes. The learned Advocate General urges that it would be very difficult to lead positive evidence in matters of this kind and that any conclusion to be reached by us must be founded upon probabilities.

87. We do not think that we can subscribe to this view. The difficulty in proof does not alter the situation or affect the question of burden of proof. In the absence of definite evidence that the non-observance of the provisions of Section 126 has resulted in the election being materially affected we have to uphold the election. In this connection, we may cite the pronouncement of the Supreme Court in *Vashit Narain Sharma Vs. Dev Chandra and Others*, . There the Supreme Court ruled that Section 100(1)(c) of the old Act corresponding to Section 100(1)(d) of the present Representation of the People Act laid the onus of proving that the result of the election had been materially affected on the petitioner challenging the validity of the election and that if the petitioner was unable to adduce evidence to substantiate the case that the result was materially affected the inescapable conclusion to which the Tribunal could come was that the burden was not discharged and that the election must stand. The language of Section 100(1)(c) was too clear for any speculation about possibilities.

88. It is thus plain from this decision that there is no scope for indulging in guesses or speculations on this question. The principle enunciated by their Lordships of the Supreme Court in the above cited case would apply with full vigour to the case on hand. In the present case, there is no scope for suggesting

that even the probabilities are in favour of the respondent's contention. We have, therefore, no option but to reject the contention and to uphold the election.

89. In the result, the appeal is allowed and the election of the successful candidate maintained. The election petition is dismissed with costs here and before the Tribunal. Advocate's fee is fixed at Rupees five hundred (Rs. 500/-). Since the cross-objections were not pressed, it is unnecessary for us to consider whether they are maintainable or not.