

**(1969) 04 RAJ CK 0010**  
**In the Rajasthan High Court**  
**Case No : Election Petition No. 15 of 1967**

Umrao Singh Dhabariya

APPELLANT

Vs

Yashwant Singh Nahar and Others

RESPONDENT

**Date of Decision :** 25-04-1969

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 14 Rule 5, Order 6 Rule 2  
Constitution of India, 1950 — Article 102(1), 191(1)  
Rajasthan High Court of Judicature Rules, 1952 — Rule 59  
Rajasthan Panchayat Samitis and Zila Parishad Act, 1959 — Section 45  
Representation of the People Act, 1951 — Section 123, 83

**Citation :** AIR 1970 Raj 134

**Hon'ble Judges :** L.N. Chhangani, J; Kan Singh, J

**Bench :** Division Bench

**Advocate :** Bajranglal and Vinodi Lal, for the Appellant; Mahaveer Chand Bhandari, Madan Raj Bhandari and P.K. Bhansali for No. 1 and Raj Narain, Additional Government Advocate for Nos. 3, 4 and 5, for the Respondent

**Final Decision :** Dismissed

## Judgement

Chhangani, J.—This is an election petition under Sections 80 and 81 of the Representation of the People Act, 1951 (hereinafter to be referred to as the Act) by Shri Umrao Singh Dhabariya, a defeated candidate, calling in question the election of Shri Yashwant Singh Nahar respondent No. 1 to the Rajasthan Legislative Assembly from the Banera Constituency (No. 144) in the last general elections held in February, 1967, claiming prayers to -

(i) declare the election of the respondent No. 1 to the a Rajasthan Legislative Assembly from Banera Constituency (No. 144) void, and

(ii) further to declare the petitioner duly elected from the aforesaid Banera constituency (No. 144) to the Rajasthan Legislative Assembly.

There were three contesting candidates in the Banera constituency:

(i) The petitioner Shri Umrao Singh, Dhabariya who was a sitting member of the Rajasthan Legislative Assembly contested the election as a Socialist Party candidate, (ii) The respondent No. 1 Shri Yashwant Singh Nahar who was the Zila Pramukh of the Bhilwara Zila Parishad was the candidate of the Congress party which was the ruling party in power headed by Shri Mohan Lal Sukhadia the Chief Minister.

(iii) The respondent No. 2 Shri Dwarka Prasad contested as a Praja Socialist Party candidate.

The first and the last date for filing nomination papers were 13th January and 18th January, 1967, respectively. Polling took place on 18th February, 1967. According to ballot paper account, 33,520 ballot papers were issued to the voters and 44 ballot papers were received by post. Thus, 33564 ballots were polled. Counting was done on 22nd February, 1967. The total votes found and counted came to 32,555 including the 44 ballot papers received by post. The rest of the ballot papers were found missing. The respondent Shri Yashwant Singh Nahar polled 16,287 votes, the petitioner Shri Umrao Singh Dhabariya 12,399 and Shri Dwarka Prasad 2,386 votes. 1,483 ballot papers were rejected as invalid. The respondent No. 1 having secured the maximum of votes was declared elected on 22-2-1967.

2. On 7-4-67 the last date of limitation the petitioner filed an election petition challenging the election on various grounds:-

(1) In the first instance, it was stated that the respondent No. 1 was, on the date of election as well as nomination, disqualified to be chosen a member of the Legislative Assembly under Article 191(1)(a) of the Constitution of India as he held the office of the Pramukh of Zila Parishad, Bhilwara, since early 1965 till the date of the presentation of the petition. It was further stated that as a Pramukh the respondent No. 1 had been drawing a monthly honorarium in addition to the travelling and daily allowances payable to him.

(2) The petitioner also averred that the respondent and his agents and workers with his consent and knowledge committed the corrupt practices of bribery and undue influence and of obtaining or procuring the assistance of certain categories of persons in the service of the Government.

(3) Reliance was also placed on the discrepancy relating to the ballot papers polled and the ballot papers counted and it was contended that the ballot papers were tampered with and the sanctity of the ballot boxes having been lost the aforesaid election cannot be maintained. The petitioner impleaded the other two contesting candidates as also Shri Shri Narain Das Mehta who was Collector and District Magistrate, Bhilwara, during the election period, the Sub Divisional Magistrate, Gulabpura -- Returning Officer for 144 Banera Assembly Constituency and Shri Shiv Narain Tiwari Vikas Adhikari, Banera District Bhilwara, as there were allegations that the respondent No. 1 procured their assistance for the furtherance of the prospects of his election.

3. The election petition and the schedules were verified in a general manner on the basis of personal knowledge and information received and reasonably believed to be correct. The petitioner also filed an affidavit as required by the proviso to Section 83(1) of the Act but in the affidavit it was not mentioned what allegations were being verified on personal knowledge and what allegations were based on information received and believed to be correct.

4. When the case came up before a learned Single Judge of this Court on 5-5-1967 Shri Kistoor Mal Singhvi appeared for the respondent No. 1 and took time for filing written statement. The other respondents did not appear and it was directed that the case would proceed ex parte against them. Subsequently, however, on 29-5-1967, Shri Raj Narain appeared for the respondents Nos. 3, 4 and 5 and wanted time for filing written statements on behalf of the respondents Nos. 3, 4 and 5. He was permitted to join and the case was fixed for the written statement on 19-6-1967. The respondent No. 1 filed his written statement on 6-6-1967. The respondents Nos. 4 and 5 submitted their written statements on 19-6-1967. The respondent No. 3 filed his written statement on 21-9-1967.

5. The respondent No. 1 in the written statement as also by means of separate applications submitted objections relating to the non-compliance of Section 81(1) and complaining of lack of full and sufficient particulars of the corrupt practices. Objection was also taken on the ground of the defective nature of the affidavit. The objections relating to these were considered on 27-7-1967: and having regard to the order of the Court passed on that date the petitioner filed an amended election petition with amended schedules on 10-9-1967. The petitions and the schedules were again verified in the same manner as the original petitions and the original schedules. A fresh affidavit was filed in support of the allegations of corrupt practices in the amended petition and the amended schedule. In para 2 of the affidavit it was stated: "That the statements made in paragraph 4 (B) (D), (F), (G), (H), (J) and (L) of the said petition about the commission of corrupt practices of bribery, undue influence, obtaining and procuring assistance from the persons in service of Government and hiring of vehicles and the particulars given in paragraphs 4 (B), (D), (F), (G), (H), (J) and (L) of the said petition and in paragraphs 1, 2, 3 and 4 of the Schedule I and paragraphs 1, 2 (i), (ii), (iii) and (iv) of the Schedule IV annexed thereto are true to my information received from my workers". The petitioner was directed to disclose the names of the workers from whom he received the above information. In compliance with this direction the petitioner filed an affidavit which was sworn on 2-10-1967, in which he gave names of his workers from whom he received information with regard to the contents of the various paragraphs.

6. The respondents filed amended replies to the election petition. They denied the various allegations made against them.

7. On the pleadings of the parties the following issues were framed:--

1. Whether respondent No. 1 being Pra-mukh of the Zila Parishad, Bhilwara, at the time of election held the office of profit under the State and was consequently, disqualified to be elected as a Member of the Legislative Assembly under Article 191(1)(a) of the Constitution?
2. Whether on 17-2-1967 at 11 p.m. the respondent No. 1 offered to Rama and Nagzi, Panchas of Raigar Community 50 paise each for 300 voters of the Raigar community and paid the amount to them on the same date in the Election Office at Banera in order to induce 300 voters of the Raigar community to vote for him and thus committed a corrupt practice of bribery as defined in Section 123(1) of the Representation of the People Act?
3. Whether Shri Utsav Lal Laddha, a worker of the respondent No. 1, with the consent and knowledge of the respondent No. 1, offered and paid Rs. 2,000 on 17-2-1967 in village Raila to Sarva Shri Nathu son of Narainji, Bhairon son of Kajorji, Chunna son of Lalooji, Panchas of Khateek community of village Raila, for digging a well for drinking water in the locality of Raila inhabited by the Khateeks, in order to induce Khateek voters to vote for respondent No. 1 and thus committed the offence of bribery as defined in Section 123(1) of the Act?
4. Whether Ram Raiji Kabra of Gulab-pura, a worker of respondent No. 1, with the consent and knowledge of the respondent No. 1, paid Rs. 10 each to nearly 150 Muslim voters of village Sujnabad, Tehsil Hurda in the night of 17-2-1967 at Ram Raiji Kabra's shop to induce the voters to vote for the respondent No. 1 and thus committed the offence of corrupt practice of bribery?
5. Whether the respondent No. 1 paid Rs. 200 to Shri Ladoo Singh of village Bhatara, Tahsil Banera, in the fourth week of January, 1967, with the object that Shri Ladoo Singh may induce the voters of village Bhatara to refrain from voting in the election. If so, did the respondent No. 1 commit the corrupt practice of bribery?
6. Whether the relief works as referred to in the orders of the Collector, Bhilwara, dated 7-1-1967, 30-1-1987 and 5/7-2-1967 were actually sanctioned by the respondent No. 1 in an irregular manner in order to brighten his prospects for the aforesaid election and to induce the voters to vote for him and if so, did he commit the offence of undue influence as defined in Section 123(2) of the Act?
7. Whether the respondent No. 1 specially attended the meeting of the Panchayat Samiti, Banera, dated 16-1-1967, wherein certain relief and development works as mentioned in Annexure No. 4 were sanctioned, and subsequently toured the villages mentioned in Annexure No. 4 and propagated that the voters of the village in which the relief works were sanctioned, should vote for him as he got those works sanctioned. If so, did he commit the corrupt practice of undue influence?
8. Whether the respondent No. 1, his workers and agents, with the consent and knowledge of respondent No. 1 obtained, procured and abetted the assistance of

Government servants Sarva Shri Naraindas Mehta (Collector and District Magistrate Bhilwara), Shiv Narain Tiwari (Vikas Adhi-kari, Panchayat Samiti, Banera), Komal Chand (Accountant, Panchayat Samiti, Banera) and Shri Moti Shanker (Overseer) for furtherance of the prospects or the respondent No. 1 in the said elections. If so, did he commit corrupt practice as defined in section 123(7) of the Act?

9. Whether Shri Mohan Lal Sukhadia was the Agent of the respondent No. 1 and whether he, as his agent with his consent and knowledge, committed the various acts referred to in para 4 (f) and exercised undue influence over the voters to enhance the prospects of the respondent No. 1?

10. Whether the respondent No. 1 offered a contribution of Rs. 100/- to muslim voters including Jamaiji s/o Ahmadji, Qadari s/o Ibrahimji, Hassanji s/o Rahimbuxji, Silawats Hassan Khan Pathan and Haiderji Kayamkhani, residents of village Banera, and if so, did he commit an offence of corrupt practice of bribery?

11. Whether the ballot boxes of the Banera constituency were tampered with as per allegations in para 4 (k). If so, what will be its effect?

12. Whether the respondent No. 1 through Shri Mohanlal Sukhadia, Chief Minister of the State, utilised the entire State machinery including the State Officers employed in connection with election duties to brighten the prospects of respondent No. 1 and if so, what will be its effect on the election?"

The petitioner examined himself and produced 20 more witnesses. He also got produced and exhibited 106 documents. The respondent No. 1 examined himself and produced 17 witnesses more and got exhibited 32 documents. The respondent Nos. 3 and 5 examined themselves and produced some witnesses. It may be mentioned that the respondents No. 3 to 5 and some of the witnesses of the respondents nos. 3 to 5 had been also included in the list of the witnesses of the respondent No. 1.

8. After the close of the evidence and during the course of arguments, the petitioner submitted a few applications which may be noticed. On 17-4-1968 he submitted an application for framing additional issues regarding allegations in paras 4 (e), 4 (f), 4 (h) and 4 (i) of the election petition. The respondent No. 1 submitted written reply opposing the application. The petitioner then submitted a supplementary application on 6-5-1968 in which he suggested draft issues. On 19-4-1968 the petitioner submitted an application for appointment of a Commissioner to inquire and report into the matter of stone slabs lying in the Raigar Community Temple of Banera. He further produced an affidavit on 6-5-1967 with three photos in support of his application. On 24-7-1968 the petitioner submitted application for re-call of certain witnesses for further cross examination with the help of photographs.

9. Till so far, the case was being tried by me. On 28-8-1968 I did not feel inclined to decide the case sitting in a single Bench. The case was put up before the

Hon"ble the Acting Chief Justice who on 6-9-68 directed that the case be heard in future by a Division Bench composed of Hon"ble Mr. Justice Jagat Narayan and myself. The parties agreed before the Acting Chief Justice that the evidence and other proceedings so far on record shall remain as it is and shall form part of the record before the Division Bench. The case was heard by the Division Bench so composed for some days and eventually on 12-3-1969 Hon"ble Jagat Narayan J. declined to take part in the trial of the election petition. The case was put up before the Hon"ble the Chief Justice who directed the case to be heard by a Division Bench consisting of Hon"ble Mr. Justice Kan Singh and myself. This is how, the case has come up before the present Division Bench.

10. We have heard the arguments of the counsel for the parties on the applications and the merits of the case. I consider it proper to take up the application relating to framing of additional issues first. In this petition the petitioner having stated in para 2 that the issues regarding the aforesaid paragraphs or parts thereof were not framed as there was no material on record then to show that the respondent No. 1 held himself out as a prospective candidate at any date prior to the dates relating to the subject matters of the contents of the aforesaid paragraphs or parts thereof as the case may be, "submitted that" from the statements of the petitioner Shri Umrao Singh Dhabariya (AW/1) and other witnesses the date of the respondent No. 1 holding himself out as prospective candidate for the election dispute can be fixed in the month of September or in any case earlier than the dates of the subject matter of the aforesaid paragraphs and consequently, the issues should be framed. Subsequently he filed a supplementary application suggesting the issues to be framed.

11. We have considered the application of the petitioner and the replies on behalf of the respondents. I may at once observe that it is hardly open to the petitioner to rely upon the materials brought during evidence for framing additional issues. Issues are framed on the controversies envisaged in the pleadings and on the materials available at the time of framing of the issues. New materials subsequently brought on record except when they may be in the nature of mere elucidation of a controversy already implicit in the pleadings do not justify the framing of additional issues. In the petition the petitioner has not come forward with a case of the subsequent materials having any (sic) elucidated the already existing controversy and consequently, the petition merits no consideration and deserves summary rejection. Even so, having regard to the emphatic arguments I propose to examine the questions as to the need of framing issues in a greater detail.

12-15 (His Lordship after examining the questions held that there was no need to frame an additional issue and rejected the application for the framing of additional issue. His Lordship then proceeded.)

16. I consider that the other two applications need not be considered separately as application relating to appointment of Commissioner is related to issue No. 2

and the application relating to re-call of certain witnesses is connected with issue No. 8. These applications shall be considered while discussing the related issues.

17. We now proceed to record our findings on the various issues framed in the case.

ISSUE No. 1:

18. The petitioner's case relating to this issue is contained in para 4 (a) which reads as follows:--

"The respondent No. 1 was on the date of his election as well as nomination disqualified to be chosen a Member of the Legislative Assembly under Article 191(1) (a) of the Constitution of India as he holds the office of the Pramukh, Zila Parishad, Bhilwara, since early 1965 till the date of the presentation of this petition. As a Pramukh, the respondent No. 1 has been drawing a monthly honorarium of Rs. 300 in addition to the travelling and daily allowance as payable to him as such Pramukh."

The respondent No. 1's reply is as follows:

"That in respect of what is urged in para 4 (a) it is not denied that the answering respondent was holding the office of a Zila Pramukh Bhilwara but the office of Zila Pramukh is an elected office. The election is held by an electoral college consisting of the members of Parliamentary Legislative Assembly of the district and member of Panchayat Samitis including the elected sur-panchas of the various Panchayats situated in the entire area of the district Bhilwara. These Surpanchas and members are elected on adult franchise of the electors in the each Panchayat circle of all the villages situated within the District. Thus office of Zila Pramukh is neither appointed nor is removable by the Government of the State of Rajasthan and allowance which is payable to the holder of the office is paid out of consolidated fund of the Zila Parishad itself which is a body corporate possessing a perpetual existence and can sue and be sued in its own capacity and this is the juristic entity.

Consequently the respondent No. 1 does not hold any office of profit as enjoined and required by the Article 191 of the constitution of India and is not disqualified to be chosen for the said office. The plea advanced is futile and deserves to be rejected"

Arguments on issue No. 1 were heard by me on 24-10-67 and issue No. 1 was decided against the petitioner.

19. A controversy was raised after the reference of the case to the Division Bench that the arguments on issue No. 1 should be heard afresh by the Bench and a fresh decision should be recorded. The petitioner's counsel contended that the election petition stands referred to the Bench for disposal and that it has to be disposed of by the judgment of the Bench. Judgment, according to him, should include decisions of all issues and that it will not be proper that the

judgment in part should be by the Bench and in part by the Single Judge. It was also submitted that Rule 59 merely contemplates the constitution of a larger Bench inter alia to decide a case ordinarily triable by a smaller Bench and does not envisage transfer of a case to the large Bench to be taken up from a particular stage and therefore, there can be no question of a decision on an issue remain-tog final and conclusive before the large Bench. The respondent No. 1's answer is that the case has been referred to the Division Bench for being heard from the stage at which it was and that the decisions taken before the reference do not stand affected. He submitted that the decisions taken at one stage must remain conclusive and binding at all stages. Rule 59 of the High Court Rules for Rajasthan contemplates a reference to a larger Bench to decide a case or any question or questions of law formulated by a Bench. The word "case" may be used in a narrow sense to imply the whole case (the election dispute case) or in a wider sense to connote a part of the case or to any state of facts requiring juridical determination. If the wider view is adopted, the decision on issue No. 1 remains a case finally decided and requires no re-opening and the Bench need only decide the controversy remaining alive at the time of the reference. If, on the other hand, a narrower view is adopted, then evidently the Bench has to apply its mind to all the controversies, arising in the case including those earlier decided. I have felt inclined to adopt the narrow view of the word "case" in the Rule and to hold that this Bench should decide the case as a whole including the controversy already decided by me; even if there be any doubt as to the right of the petitioner to claim a fresh hearing and a decision on the issue No. 1 on a proper view of the word "case". I think, there is still nothing to prevent this Bench concerned with the disposal of the whole case to reconsider and decide afresh issue No. 1.

20. Proceeding to consider issue No. 1 on merits, I may at once observe that the petitioner was Pramukh at the time of the filing of the nomination paper as also at the date of the election. It is also not in controversy that he was drawing a honorarium of Rs. 300 per month in addition to travelling and daily allowances. Clearly, he was (not?) holding office of profit under the Rajasthan State. In relation to this controversy, the arguments of the petitioner's counsel may be summarised.

In the first instance, he emphasised the principle underlying disqualification and contended that the object of introducing disqualification is to prevent conflict between the duties of the member of the Legislature as such and private interests. He pointed out that indebtedness of a member to Government is incompatible with his independence as a representative of the people, and that the Legislature felt the need to limit the control or influence of the executive Government over the House by means of undue proportion of office and holders being members of the House. Having regard to this object, it was contended that the provisions relating to disqualification should be liberally interpreted so as to achieve the object of Legislature. He then read before me various provisions of the Rajasthan Panchayat Samitis and Zila Parishads Act relating to the

constitution of the Zila Parishad; the election of the Zila Pramukh and the provisions relating to the control of the Government and inter alia made out the following points:--

(1) Zila Parishads have been constituted to exercise functions of the Government which in their absence would have been exercised by the Government.

(2) That although the Zila Pramukh is elected by an electoral college u/s 45 of the Rajasthan Panchayat Samiti and Zila Parishads Act, 1959, the Government under certain circumstance may have some hand in the constitution of the electoral college. It was pointed out.

(i) that under some circumstances under which Government role may have some significance there is a probability of some persons other than Pradhan, namely, Up-Pradhan or any other person to be elected by the Panchayat Samiti to be the member of the electoral college.

(ii) Similarly, in some cases some of the members of the electoral college, namely, the co-opted members may be nominated by the Government.

(3) That the Government have considerable financial control over the funds of the Zila Parishad.

(4) That the Government have power to recruit and lay down conditions of service of the staff of the Zila Parishad and other Panchayat institutions.

(5) That the Zila Parishad has no independent source of income which is derived from grants of the Government and donations and contributions from the Panchayat Samitis or from the public.

(6) That the Zila Pramukh is paid honorarium out of the funds of the Zila Parishad which are derived from grants of the Government and thus he is paid out of public revenue.

(7) That the Government have the power to extend the period of the Zila Parishad and thus of the Zila Pramukh and in this manner the Government can be said to have the power of temporarily nominating the Zila Pramukh for the period to be extended.

(8) That the Government have power to supersede or dissolve the Zila Parishad and thus to bring about an end of the tenure of the Zila Pramukh. This power is similar to the power of the Government to dismiss or remove a Government servant.

(9) That the Government have power to exercise power of review over the decisions of the Panchayat Samitis and to issue appropriate directions in some cases and that the Government have the power to arbitrate in some disputes between Panchayat Samitis, Municipal Boards and Zila Parishads.

On the basis of these points it has been strongly contended that the status of the Zila Parishad has been reduced to that of a State Department and consequently,

the Zila Pramukh should be considered to hold office under the State.

21. As the Supreme Court and the High Courts had occasion to consider the true scope and the implications of the expression "under the State" it will be proper at the outset to notice these cases. The first case to be referred is *Maulana Abdul Shakur Vs. Rikhab Chand and Another*, In that case the Supreme Court pointing out the distinction between the "holders of office of profit under some other authority subject to the control of the Government," observed-

"No doubt the Committee of the Durgah Endowment is to be appointed by the Government of India but it is a body corporate with perpetual succession acting within the four corners of the Act. Merely because the Committee or the members of the Committee are removable by the Government of India or the Committee can make bye-laws prescribing the duties and powers of its employees cannot in our opinion convert the servants of the committee into holders of office of profit under the Government of India. The appellant is neither appointed by the Government of India nor is removable by the Government of India. The power of the Government to appoint a person to an office of profit or to continue him in that office or revoke his appointment at their discretion and payment from out of Government revenues are important factors in determining whether that person is holding an office of profit under the Government though payment from a source other than Government revenue is not always decisive factor."

It was further observed,

"A comparison of the different articles of the Constitution 58 (2), 66(4), 102 (1) and 191 (1)(a) dealing with membership of the State Legislatures unlike the case of the President and Vice-President of the Union the disqualification arises on account of holding an office of profit under the Government of India or the Government of the States but not if such officer is under a local or any other authority under the control of these Governments. As we have said the power of appointment and dismissal by the Government or control exercised by the Government is an important consideration which determines in favour of the person holding an office of profit under the Government, but the fact that he is not paid from out of the State revenue is by itself a neutral factor."

22. In *Guru Gobinda Basu v. Sankari Prasad Ghosal* AIR 1984 SC 254 the Supreme Court had another occasion to consider the true scope and meaning of the expression "under the Government of India Act or Government of any State". From this judgment, it appears that the factors that ought to be taken into consideration in determining the question whether a person holds office of profit under the Government are these -

1. Whether Government makes the ap-pointment to the office.
2. Whether Government has the right to remove or dismiss the holder of office;
3. Whether Government pays the remuneration;

4. What are the functions which the holder of the office performs and does he perform them for Government; and
5. Does Government exercise any control over the performance of those functions.

It was, however, emphasised that the decisive test is the test of the appointment and that all the factors need not co-exist and that each need not show subordination to the Government. It was further observed that the source from which the remuneration is paid is not from public revenue is a neutral factor not decisive of the question. It was also remarked whether stress should be laid on one fact or the other should depend on the facts of each case.

23. In *Ramlal Vs. Vishveshwar Nath*, Hon<sup>ble</sup> Jagat Narayan J. reviewed the various provisions of the Rajasthan Panchayat Samiti and Zila Parishads and the Supreme Court cases and reached a conclusion that "the office of the Pramukh of the Zila Parishad is not an office under the State Government within the meaning of Article 102(1)(a) of the Constitution. A Pramukh no doubt holds an office under the Zila Parishad which is a local authority subject to the control of the State Government. He is disqualified for the office of the President of the Union under Article 58(2) of the Constitution. But he is not disqualified for being chosen as a member of the Parliament or the Legislative Assembly of the State."

24. A Full Bench of the Punjab High Court in *S. Umrao Singh Vs. Darbara Singh and Others*, had an occasion to consider whether the Chairman of the Panchayat Samiti holds an office under the State Government. On a consideration of the provisions of the Punjab Panchayat Samitis and Zila Parishads Act 1961 which are similar to the provisions of the Rajasthan Panchayat Samitis and Zila Parishad Act, the Full Bench held that "the Chairman of the Panchayat Samiti does not hold an office under the State Government, for the Panchayat Samiti is a local authority being a corporate body having perpetual succession and common seal and it cannot be termed either as a department of the Government or a body belonging exclusively to Government." In the Punjab case AIR 1968 Punj and Har 450 (FB) Maha-jan J. who delivered the judgment of the Court, referred to the decision in this case of *Ramlal Vs. Vishveshwar Nath*, as also to the decision of the Bombay High Court in *Motsingh Vs. Bhaiyyalal*, Both these decisions were in respect of the Chairman of the Zila Parishad (that is Zila Pramukh). The learned Judge after comparing the provisions of the Rajasthan Panchayat Samitis and Zila Parishad Act, 1959 and the Maharashtra Zila Parishads and Panchayat Samitis Act, 1961 observed that "the provisions of the Rajasthan and Bombay Acts are, more or less, analogous to the provisions of the Punjab Act. All that can be said for the petitioner is that the provisions in the Punjab Act, so far as Government control is concerned, are somewhat stricter. But, in our opinion, that does not make any difference so far as the question, which we have to decide, is concerned. We entirely agree with the reasoning of the Rajasthan and the Bombay High Courts, and, in our opinion the Chairman of a Panchayat Samiti does not hold an office under the State of Punjab."

25. Approaching the case in the light of the principles enunciated in the above case, I consider it necessary to indicate a few important features relating to the Zila Parishad and the Zila Pramukh under the Act:--

(1) The Zila Parishad and other Panchayat institutions have been created to give impetus to the political process of ensuring effective popular participation in the Government policy and activity at the village, tehsil and district levels and these Panchayat institutions discharge functions which would normally be discharged by the servants of the State in the absence of such institutions.

(2) That the Zila Parishad is a body corporate having perpetual succession and a common seal with powers to acquire, hold and dispose of the property, to enter into contracts and to sue or to be sued in its corporate name.

(3) That by the statute the Government have been given control over the staff of the Panchayat institutions, financial control and administrative control, but this control has been given to strike a balance between the political process described above and the Government process of efficient administration. That on account of this control the Zila Parishad cannot be said to have been reduced to a mere State Department and that the Zila Pramukh holds office under the State.

(4) That the Government have no direct hand in the appointment or removal of the Zila Pramukh; whatever indirect control the Government may have under the Statute cannot warrant an inference that the Zila Pramukh should necessarily feel indebted to the Government.

(5) That the Zila Pramukh no doubt receives honorarium from the Parishad's funds to which the Government grants might be made but this factor is not at all decisive and cannot lend support to a contention that the Zila Pramukh holds office under the Government.

(6) That the Government can no doubt extend, the term of the Zila Parishad and thus the term of the Pramukh but this extension of the term of the general body cannot be equated to the appointment of Zila Pramukh for the extended period. The Zila Pramukh has to be, in the first instance an elected person and the extension of period by the State in the exercise of statutory powers is not at all a significant factor in determining whether the office of Zila Pramukh is under the State Government.

(7) That the Government have power to supersede and dissolve the Zila Parishad but evidently the dissolution of the entire body is not the same thing as removal or dismissal of a member from the body. It is not possible to treat an indirect termination of the tenure of the Zila Pramukh in this manner as equivalent to dismissal or removal of a Government servant.

Having regard to the principles of the cases noticed above and the above features, I have no hesitation in holding that the office of the Zila Pramukh is not an office under the State. Issue No. 1 is decided against the petitioner.

26-80. [His Lordship discussed the evidence on issues 2 to 8 and held against the petitioner. In the course of discussing issue No. 9, His Lordship proceeded:]

81. The counsel for the petitioner tried to make some points from circumstances appearing on the records in an attempt to secure a finding on this issue in his favour. Mr. Ram Prasad Laddha (NAW/3) when cross-examined by the petitioner stated:

"I had not laid down the foundation stone laying ceremony of the Spinning Mill at Gulabpura, but before such ceremony was performed by Shri Sukhadia, I, of course, had attended some ceremony in connection with the Mill on an earlier occasion. That was a sort of "Mangal Kamna" ceremony. On that occasion a "Havan" was performed, but no foundation stone was laid. The earlier ceremony was performed at the very site where subsequently foundation stone was laid by Shri Mohan Lal Sukhadia. I do not remember the date when I performed the ceremony." [The witness was reminded that that ceremony was performed on 26th January, 1967. Even thereafter, the witness did not give any affirmative answer.] It was pointed out that on the occasion of the foundation Stone laying ceremony several Sarpanchas had been invited. It was also suggested that there was a circular by the Prime Minister to all the Chief Ministers prohibiting them to participate in State functions where Government finances are involved. Shri Mohan Lal Sukhadia was questioned on this point and he stated, "As far as I remember the Prime Minister of India issued a circular to the various Chief Ministers on the eve of the 1967 elections advising them not to refer to election matters in State functions." The circular has not been brought on record and it cannot be said whether the circular was as suggested by the counsel for the petitioner or was of the nature indicated in the statements of Shri Mohan Lal Sukhadia. It was submitted that the two ceremonies in a very short period in disregard of the Prime Minister's circular cannot but have been arranged with an eye on the election prospects of the congress party and that situations were created to avail of the opportunities to contact voters. This it was argued, was evidently an unhealthy and an evil practice. Continuing further, the counsel submitted that Shri Ram Prasad Laddha stated that Shri Mohan Lal Sukhadia immediately after the function was over left for Udaipur. It was suggested that this wrong statement was made by him to suggest that Shri Mohan Lal Sukhadia could have no occasion to contact the Directors after the meeting and to make any suggestions to them in connection with the election and thus to rebut the petitioner's evidence. It was pointed out that his statement is belied by the statement of Shri Narain Das Mehta (NAW/3, 4, 5/7) who stated that after the meeting a tea party was arranged in Gandhi Vidhyalaya. Shri Hamendra Singh (NAW/8) also refers to tea party and adds that at the meeting Shri Mohan Lal Sukhadia asked him to support the congress and the respondent No. 1. Some photographs have also been brought on record to prove the presence of Shri Hamendra Singh in the tea party. This statement of Shri Ram Prasad Laddha about the departure of Shri Mohan Lal Sukhadia, it was submitted, has been made only with some kind of consciousness of the reference to the election

matters by him. It was further stated that having regard to the statement of Shri Hamendra Singh it appears more probable that Shri Mohan Lal Sukhadia must have referred to the election matters in his speech and that there was an attempt of an indirect bargain to secure votes. Reliance was placed in this connection upon the observations of the Supreme Court in Ghasi Ram Vs. Dal Singh and Others, I regret, I cannot accept the petitioner's submission. Proceeding to give reasons, I must state that in the first instance the petitioner did not come forward with a case as now sought to be established. He did not refer to the earlier ceremony by Shri Ram Prasad Laddha in connection with the Spinning Mill. He did not make any reference to the circular of the Prime Minister. The respondent had no notice of the case now sought to be developed and it will be hardly proper to take the respondent No. 1 by surprise.

Secondly, the circular has not been brought on record and it is not possible to have any correct idea of the contents of the circular. The statement of Shri Ram Prasad Laddha is capable of being construed as to imply that Shri Mohan Lal Sukhadia immediately left the scene of the occurrence for Udaipur but it does not necessarily mean a denial of the fact that Shri Mohan Lal Sukhadia and Shri Ram Prasad Laddha had tea at some other place. He was not specifically questioned on that point. The inaccuracy in the statement might have also been on account of lapse of memory but it is not possible to characterise the statement as a deliberate falsehood so as to justify any inference against the respondent No. 1. I do not think that the petitioner had succeeded in establishing the evil practice much less the corrupt practice. The issue is, therefore, decided against the petitioner.

82-162. (His Lordship held against the petitioner on the rest of the issues and proceeded.)

163. The trial of the election petition having been completed, it is now unnecessary to decide whether the respondents Nos. 3, to 5 are not necessary parties.

164. All the issues having been decided against the petitioner, the petition cannot succeed and I would dismiss it with costs to respondent No. 1. The other respondents will bear their own costs.

Kan Singh, J.

165. I have had the advantage of going through the judgment prepared by my learned brother and I concur in the result reached by him that the election petition should be dismissed. However, in deference to the protracted arguments of learned counsel lasting over two weeks I will like to make a few observations of my own.

166-167. The man grounds of challenge against the election of the respondent No. 1, Shri Nahar, as a member of the Rajasthan Legislative Assembly can be broadly put under three heads.

1. That, Shri Nahar being a Pramukh was a holder of an office of profit under the Government and was consequently, disqualified under Article 191(1)(a) of the Constitution from seeking election to the State Assembly.

2. That, Shri Nahar had committed various corrupt practices such as,

(i) giving or offering bribe to various persons for the obtaining of votes,

(ii) he or his agents exercising undue influence on the Government servants for obtaining or procuring their assistance for the election campaign and generally the utilisation of the State machinery at the behest of certain Ministers to brighten the prospects of Shri Nahar for his election.

(iii) Shri Nahar himself abusing his position as a Pramukh and obtaining funds during the election campaign for the famine relief works.

3. That the ballot papers were tampered with and the sanctity of the ballot boxes was thereby affected so as to call for the setting aside of the election.

168. The first point was subject matter of issue No. 1 set out by my learned brother in the earlier part of his judgment. It was contended by the learned counsel for the respondent No. 1 that this issue having been decided by my learned brother before the election petition came to be placed before the present Bench, it is not open to us to reconsider this issue. My learned brother has come to the conclusion that there was nothing to prevent this Bench from reconsidering issue No. 1. However, I do not wish to express any opinion on this point but even apart from it, I have considered the matter assuming for the sake of argument that it was open to this Bench to reconsider the issue.

169. Article 191 which is the counterpart of Article 102 of the Constitution in relation to State Assembly inter alia enacts that a person shall be disqualified for being chosen as a member of the Assembly if he holds any office of profit under the Government of India or the Government of any State other than an office declared by Parliament by law not to disqualify its holder. The issue that was framed contains the words -- "Office of profit under the State". The sophisticated controversy regarding the difference between the term "State" and the term "Government" need not detain me because Shri Bajranglal learned counsel for the petitioner, has himself submitted that they are the same. For obvious reasons, it is unnecessary to enter into this subtlety of distinction.

170. The same question had arisen before a learned single Judge of this Court in another election petition Ramlal Vs. Vishveshwar Nath, and Jagat Narayan T. who decided the case, on consideration of the relevant provisions of the Rajasthan Panchayat Samitis and Zila Parishad Act, 1959 had come to the conclusion that a Pramukh though a holder of the office of profit does not hold the office under the Government within the meaning of Article 191 of the Constitution. The learned Judge had also referred to a number of cases including a decision of their Lordships of the Supreme Court in Gurugobinda Basu Vs. Sankari Prasad Ghosal and Others, My learned brother has gone into the matter and has come to the

same conclusion as Jagat Narayan J. He has already copiously quoted from the relevant decisions of the Supreme Court. I do not think, I can shed any extra light on the problem or give any new dimension to the reasoning that has prevailed with Jagat Narayan J. or with my learned brother. The five interlocking principles laid down by their Lordships and which should guide the consideration of the question are-

- 1) Whether Government makes the appointment to the office;
- 2) Whether the Government has the right to remove or dismiss the holder of office;
- 3) Whether the Government pays the remuneration;
- 4) Whether the holder of the office performs his function for the Government; and
- 5) Whether the Government exercises any control over the performance of those functions.

It was pointed out by their Lordships that all these features need not co-exist in a given case for showing subordination of office to the Government and further, whether the stress would be laid on one factor in preference to the other, will depend upon the facts of each case. The ordinary dictionary meaning of the term "under inter alia is "to be in a subject or subordinate condition" (Webster New International Dictionary Vol. II page 2434). The term "control" is used in a very wide sense and covers a number of institutions and methods used by the legislature for ensuring observance of the law made by it As a result of the Rajasthan Panchayat Samitis and Zila Parishads Act democratic decentralised administration at the Block and District level was brought about. The Rajasthan Panchayat Act which existed on the Statute Book was also amended in the light of provisions of the Rajasthan Panchayat Samitis & Zila Parishad Act, 1959. Reading the two together it appears that a three-tier system of district administration in the sphere of Local Self Government was ushered in. At the bottom was the Gram Panchayat which covered a village or a group of villages. Certain functions were assigned to the Gram Panchayat which was the smallest cell of democracy. Above the Gram Panchayat were the Panchayat Samitis at the Block level and the constituent territorial units were the Panchayats, Sarpanchas were ex officio members of Panchayat Samitis and there were certain other members in the Panchayat Samitis. Then, at the District level was the Zila Parishad and the pattern of its composition was, in several respects, akin to that of the Panchayat Samiti in that the Pradhans of the Panchayat Samitis were made the members of the Zila Parishads together with some other persons. The Pramukhs were elected by an electoral college and could be removed by a vote of no confidence by the members of the Zila Parishad. They were to be remunerated by a honorarium to be paid out of the Zila Parishad funds. Zila Parishads were corporate bodies capable of holding properties and of suing and being sued in their own name and their succession was perpetual. Holder of such an office, therefore, does not fulfil, the first three tests laid down in Gurugobinda

Basu Vs. Sankari Prasad Ghosal and Others,

171. The next question is whether the holder of the office performs any functions for the Government. The functions that a Pramukh has to perform are laid down by the Statute itself (viz. Section 57) and they are obviously for the purposes of the Zila Parishad and not for the Government. 172. In the circumstances, learned counsel for the petitioner stressed the last and the fifth test. He referred to a number of sections in the Act for showing that the Governmental control was so thorough and complete that there was full subordination of the Pramukh and consequently, he has to be taken to be a holder of an office under the Government. I am afraid, such a far-reaching conclusion is not warranted.

My learned brother has referred to in detail the various sections. These were also referred by Jagat Narayan J. in Ramlal Vs. Vishveshwar Nath, What is remarkable is that the control, if any, is institutional and not personal. The legislators had created the autonomous body, namely Zila Parishad for discharging certain functions and for ensuring that it did not over-step the boundaries of its authority--the legislature has provided a supervisory or a controlling authority which would ensure that the autonomous body created by the statute does not overstep its boundaries and within the area assigned to it conducts itself according to law. It is further remarkable that while the Government might remove a Sarpanch of a Gram Panchayat or the Panchas thereof, no disciplinary powers similar to that have been conferred on the Government regarding a Pramukh. In other words, the power or removal of a Pramukh has not been vested in the Government though under the stated conditions such a power is exercisable in respect of Sarpancha or any of the Panchas of the Gram Panchayat. I am showing this only by way of comparison but not with a view to entering into the question whether Sar-panchas or Panchas are holders of office of profit under the Government. Whatever powers are exercisable by the Government regarding the Zila Parishad are, to my mind on institutional basis. From the Act it cannot be spelt out that the Government have the powers to dictate how a Pramukh should exercise his functions. The main functions of the Pramukh, besides being the executive head of the Zila Parishad, is to co-ordinate the various activities of the Panchayat Samitis in the District. Regarding this, the Government have not been assigned any role.

172A. Learned counsel also stressed that the funds for the Zila Parishad are provided by the Government. This is only partially correct. There are two sources of finances provided for the Zila Parishads. One is by Government grants and the second is by donations by the Panchayat Samitis (vide section 63 of the Panchayat Samitis and Zila Parishad Act). The Government have no hand whatsoever regarding the second source. Apart from "this, when the funds are vested in the Zila Parishads they cease to be part of the consolidated fund of the State after the grant and, therefore, it cannot be predicated that the Pramukh is paid either out of Government funds or the Government exercises any control over a Pramukh personally. All other aspects of the matter have been fully dealt

with by my learned brother and as I have already observed, I cannot shed any extra light on the consideration of the question. I therefore, agree with my learned brother that the decision of the issue has to be against the petitioner.

173. While the evidence was being read to us my mind came to be exercised over three incidents and, therefore, I would like to concentrate on certain features of those incidents. The first was the function arranged for the foundation laying ceremony of Jawasia Bandh on 21-12-66. The second was relating to the foundation ceremony of the Spinning Mill at Gulabpura on 30th January, 1967, and the third was about Shri Nahar's writing a number of letters for allotment of funds in connection with famine relief works while he was touring his constituency in connection with his election campaign. Before dealing with these various features, however, I would like to refer to the two recent decisions of the Supreme Court in which the conceptual difference between what is corrupt practice and what is evil practice has been pointed out. Their Lordships also pointed out as to when an evil practice could be regarded as a corrupt practice for an election. The first case is Ghasi Ram Vs. Dal Singh and Others, In that case the election petitioner challenged the election of the returned candidate who was a Minister for Irrigation and Power in Haryana till the result of the election. The election was challenged on the grounds of certain corrupt practices and the gravamen of the charge was that certain discretionary funds were placed at his disposal to bribe the voters and he used his position to favour some villages with a view to securing support for his candidature. It appears that by a Government resolution certain sums or money were placed at the disposal of the Ministers for distribution as discretionary grants and the money was required to be spent in three months' time. These discretionary grants were part of the general scheme to better community development projects and to remove the immediate grievances of the public. There was evidence to show that the respondent had promised certain discretionary grants to Gram Pan-chayats and public at large for community development in his own constituency and had actually distributed the money not among the voters directly but had given it to the Panchayats concerned. There was, however no evidence to prove that the returned candidate had bargained directly or indirectly for votes. Their Lordships examined a number of cases and held-

1. That the law requires that a corrupt practice involving bribery must be fully established. The evidence must show clearly that the promise or gift directly or indirectly was made to an elector to vote or refrain from voting at an election.
2. The position of a Minister is difficult. It is obvious that he cannot cease to function when his election is due. He must, of necessity, attend to the grievances, otherwise he must fail. He must improve the image of his administration before the public. If every one of his official acts done bona fide is to be construed against him and an ulterior motive is spelt out of them, the administration must necessarily come to a standstill."

Having held this, their Lordships made very weighty observations in the following

words:

"Election is something which must be conducted fairly. To arrange to spend money on the eve of elections in different constituencies, although for general public good, is when all is said and done an evil practice, even if it may not be corrupt practice. The dividing line between an evil practice and a corrupt practice is a very thin one. It should be understood that energy to do public good should be used not on the eve of elections but much earlier and that even a slightest evidence might change this evil practice into corrupt practice. Payments from discretionary grants on the eve of elections should be avoided."

The position was reiterated in *Om Prabha Jain Vs. Abnash Chand and Another*, 174-187. It is in the light of what their Lordships were pleased to lay down that I may proceed to deal with the incidents in question.

(His Lordship discussed the evidence and concluded).

188. In the result I hold that the election petition is fit to be dismissed as already indicated at the outset with costs.

BY THE COURT

189. In the result, the election petition is dismissed with costs to respondent No. 1. Other respondents will bear their own costs.

190. The Election Commission and the Speaker Rajasthan Legislative Assembly shall be informed of the result of this election petition forthwith, and authenticated copies of the judgment shall be forwarded to them as soon as they are ready.