

APPELLATE CIVIL.

Before D. Falshaw and Harbans Singh, JJ.

SHRI GURBANTA SINGH, EX-MINISTER, PUNJAB
GOVERNMENT,—Appellant.

versus

PIARA RAM AND OTHERS,—Respondents.

First Appeal from Order No. 207 E of 1958.

Representation of the People Act (XLIII of 1951)—Section 123—Charge of bribery—Allegation of actual payment made in the petition—Whether at the trial attempt to make payment can be proved—Corrupt practice—Burden of proof—Extent of—Double-member constituency—Two candidates enjoining mutual assistance—Whether become agents of each other and liable for each other's acts—Section 7(d)—Subsistence of contract with the Government—Whether extends up to the time of final payment or till the goods are supplied.

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Held, that a petitioner who, in an election petition, puts forward allegations with regard to actual payment of money by way of illegal gratification to procure the withdrawal of the candidature of a rival candidate, cannot be allowed to prove at the trial that, in fact, no money was actually paid, but that only an attempt was made to make such a payment. The two allegations are not exactly the same, and unless the petitioner applies for an amendment, and such an amendment is allowed to be made in the petition, the petitioner is not entitled to propound a case at the trial different from the one set up by him in the petition.

Held, that the election petitions, so far as they relate to charges of corrupt practices, bear a very great similarity to a criminal trial and consequently the burden lies fairly heavy on the petitioners to prove the charge of a corrupt practice of bribery more or less with the same amount of certainty as would be required from the prosecution to prove a criminal charge of bribery.

Held, that the mere fact that the two candidates have enjoined mutual assistance would not render one of them liable for the illegal or criminal acts of the other as being his agent. There must be some further evidence, apart from their having agreed to help each other, being the candidates set up by the same political party, to enable the Court to draw an inference that an illegal act done by one was with the consent or authority of the other.

Held, that the order placed by the Government and accepted by the firm constitutes a distinct contract for the supply of the goods and it must be treated as subsisting till the payment for the goods has actually been made. The contract does not terminate, so far as the firm is concerned, after the supply has been made and it is wrong to say that thereafter the relationship between the Government and the firm is merely that of a creditor and a debtor.

First Appeal from the Order of the Court of Shri Rama Prasad Mukerjee, Election Tribunal, Chandigarh, dated the 7th November, 1958, declaring the election of Kartarpur Assembly Constituency void and unseating the appellant and respondent No. 3.

C. K. DAPHTARY, M. R. MAHAJAN and M. L. KALIA, for Appellant.

H. L. MITTAL and J. N. TALWAR, for Respondents.

JUDGMENT

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HARBANS SINGH, J.—From the double-member constituency of Kartarpur in district Jullundur Shri Gurbanta Singh for the seat reserved for a scheduled caste candidate and Shri Karam Singh Kirti for the general seat fought election on Congress ticket and were declared elected during the last general elections to the Punjab Legislative Assembly. On a petition filed by two of the unsuccessful candidates, namely, Sarvshri Piara Ram and Mota Singh, the Election Tribunal, Chandigarh, declared the election of both the successful

candidates to be void. Two separate appeals have been filed against this order, one by Shri Gurbanta Singh and the other by Shri Karam Singh Kirti (First Appeals from Order Nos. 207/E and 211/E of 1958). This order will dispose of both these appeals.

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In the petition the election of the appellants was challenged on a large number of grounds, but the Election Tribunal only found that so far as Shri Karam Singh Kirti was concerned, he was disqualified from being chosen as a member of the Legislative Assembly of the Punjab State because at the material time there was a subsisting contract for the supply of goods between the Punjab Government and firm G. W. Balkar and Co., in which Shri Karam Singh Kirti had an interest, and also, that Shri Karam Singh Kirti, was guilty of having committed a corrupt practice, because he had attempted to pay a sum of Rs. 200 to Kartar Chand, a rival candidate for the reserved seat, as an inducement to him to withdraw from the contest, and it was further held that in making his offer of the bribe Shri Karam Singh Kirti was acting as an agent of Shri Gurbanta Singh and with his consent, and that consequently Shri Gurbanta Singh was also guilty of having committed a corrupt practice and his election was, therefore, void. In the alternative it was found that even if this corrupt practice of bribery was committed by Shri Karam Singh without the consent of Shri Gurbanta Singh, the same was clearly done in his interest and that this had materially affected the result of the election and consequently the election of Shri Gurbanta Singh was void on this ground also.

With regard to the question of bribery, we have the statement of Kartar Chand, P. W. to whom the offer is said to have been made and that of

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Pritam Singh P. W. who is said to have been present at the time. According to Kartar Chand, he was one of the validly nominated candidates during the last general elections and on the 4th of February, 1957, which was the last date for the withdrawal of the candidature, he had gone to the office of the Deputy Commissioner at Jullundur and was standing outside in the lawns at a short distance from the office of Shri J. S. Madan, the Returning Officer, when he was approached by Pritam Singh who told him that he being a Congress candidate should not oppose the official nominee of the Congress and that if he continued to contest the election he may adversely affect the chances of the official candidates by deflecting a large number of electors because he had influence in about eighty villages in that constituency where persons coming from Dhijkot Manko in West Pakistan, from where Kartar Chand had come, had settled. At that time Shri Karam Singh Kirti came out of the room occupied by Shri J. S. Madan, Returning Officer, and told him that "the Congress High Command had made the final selection". What happened thereafter is described by Kartar Chand as follows:—

"I told him that I would have to ascertain what the Congress High Command had done and then I may decide. At that stage, Kirti Sahib attempted to put into my pocket four or five hundred-rupee currency notes and though I pressed my pocket, he thrust them into it. I, thereupon said that this is not a matter of sale of livestock, but is a question of honour and prestige. I would not accept any consideration for this. If I am satisfied about the final decision of the Congress High Command, I would withdraw from

the contest and I returned the money to the pocket of Kirti. Thereafter, on ascertaining the fact, I signed a withdrawal form which was filled in by a petition-writer and I placed it on the table of Madan Sahib. This is how I withdrew."

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According to him all this conversation and the attempt to pass on the money happened between 12 noon and 1 p.m., and he read the decision of the Congress High Command giving the Congress ticket to Shri Gurbanta Singh and Shri Karam Singh Kirti in the Daily Milap at about 1-30 p.m. and thereafter he put in his withdrawal.

Pritam Singh, P.W. 9 stated that he had met Kartar Chand along with one Nirmal Chand between 10 and 11 a.m. on the date of the withdrawal in front of the Deputy Commissioner's office when he found Shri Karam Singh Kirti along with two or three persons including Sant Ram of Beas Pind (who was another rival candidate) and one Shanghara Singh talking with one another at a distance of about 10 or 12 yards from them. After 10 or 12 minutes Shri Karam Singh Kirti came to the place where Kartar Chand, Pritam Singh and Nirmal Chand were present. This is what, according to him, happened thereafter:—

"Karam Singh told me that I am a Congressman; Kartar Chand is also a Congressman; you are of Congress; why should there be a fight between the Congressmen and get the withdrawal of Kartar Chand. * * * * Sardar Karam Singh Kirti stated that, as Shri Gurbanta Singh and he had been selected by the High Command, others should

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not enter into the conflict as is being done. Sardar Karam Singh further told that 'as Shri Gurbanta Singh was a Minister from your area and your *bradri*, therefore, you should take back your papers'. * * * * it was also stated that, as Master Gurbanta Singh was a Sikh and he is looked upon as a desirable candidate amongst the Sikhs, the contest should not be continued. * * * * after such request had been repeated twice or thrice, Kartar Chand stated that he would not withdraw as he had migrated from Dhijkot Manko in Pakistan which was a big town and the people who had come from there are spread over this area and are insisting upon my continuing being a candidate. At that stage Kartar Chand refusing to withdraw, Shri Karam Singh tried to put some currency notes in the pocket of Kartar Chand. He however, placed his hand over his pocket and did not allow Shri Karam Singh to put the notes into the pocket. * * * The currency notes which were being forced into the pocket of Kartar Chand were taken out by him and handed over to Shri Karam Singh. Then Kartar Chand said that, 'when you are so much insistent and you are appealing to me in the name of Congress, I would withdraw my candidature, but not accept the notes'."

Thus we find that the story given by Kartar Chand and Pritam Singh is not quite the same. According to Kartar Chand, he had been stating from the very beginning that he would withdraw

if he were sure that a final decision had been taken in favour of Shri Gurbanta Singh by the Congress and that it was only after he had made sure of this by reading in the Daily Milap that he had put in his withdrawal. The statement of Pritam Singh, on the other hand, gives the impression that it was only when the money was offered by Shri Karam Singh Kirti and both Pritam Singh and Shri Karam Singh Kirti insisted that he should withdraw, that he agreed to do so as a result of the persuasion of these two persons and not otherwise. Apart from this, the whole story of the amount having been offered by Shri Karam Singh Kirti so openly in the precincts of the office of the Deputy Commissioner on the date of the withdrawal of the candidature, when almost all the candidates and a large number of their supporters would be hanging about to see the final shape of the contest in the constituency, sounds to be unnatural and highly improbable. Every body knows that the offer of money and its acceptance are illegal acts and no one would ever offer, or would accept the offer of, such an illegal gratification openly. If Shri Karam Singh Kirti, or anyone of his supporters, felt that Kartar Chand could be persuaded to withdraw his candidature for money consideration, the normal thing would be to approach Kartar Chand in private at his house and not offer him the money openly in the Court compound. It is further to be noted that the evidence given by these two persons before the Election Tribunal is materially different from the case that had been set up by the petitioners in the petition itself. Paragraph 7(1) of the petition deals with the allegations of the corrupt practice of bribery and the material parts of clauses (b) and (c) thereof are as follows:—

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“(b) That on 4th February, 1957, between the hours of 10 and 11 a.m. Bawa Sant

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Ram a duly nominated candidate from this constituency was offered a cash gratification of Rs. 2,000 by respondent No. 2 Shri Karam Singh when he was accompanied by his relative and agent Shri Wattan Singh Murad Puri. This cash gratification was offered in the precincts of the office and the Court of the Deputy Commissioner, Jullundur, at a small distance from the office of the Returning Officer * * * with the object of securing his withdrawal from Bawa Sant Ram. * * * *

- (c) That on 4th February, 1957, between the hours of 11 a.m. and 12 noon Chaudhari Kartar Chand of village Ghorewahi a duly nominated candidate was approached by respondent No. 2 Shri Karam Singh and was paid a cash reward of Rs. 500 for a definite promise of his withdrawal from the contest. This was done in the precincts of the office and Court of the Deputy Commissioner, Jullundur, at some distance from the office room of the Returning Officer. *

From the above it is clear that so far as Bawa Sant Ram is concerned, the allegations only were that Rs. 2,000 were "offered" as gratification, while in the case of Kartar Chand the allegations were that Kartar Chand *was paid* a cash reward of Rs. 500 as consideration for a promise on behalf of Kartar Chand to withdraw from the contest. As would be clear from the summary of the evidence of Kartar Chand given above, he does not state that he was paid any such amount or that he gave any promise to withdraw as consideration for such a payment. It is doubtful whether a petitioner, who, in an election petition, puts forward allegations

with regard to actual payment of money by way of illegal gratification to procure the withdrawal of the candidature of a rival candidate, can be allowed to prove at the trial that, in fact, no money was actually paid, but that only an attempt was made to make such a payment. The two allegations are not exactly the same, and unless the petitioner applies for an amendment, and such an amendment is allowed to be made in the petition, we are of the view that the petitioner is not entitled to propound a case at the trial different from the one set up by him in the petition.

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It was urged by the learned counsel for the petitioners in this case that under sub-section (2A) of Section 238 of the Code of Criminal Procedure a person who is charged with an offence may be convicted of an attempt to commit such offence although the attempt is not separately charged, and that on the analogy of this provision, if the petitioners have made allegations of actual payment of the money, they should be allowed to prove at the trial that an attempt to pass the money had been made. As at present advised, we feel that the analogy is not complete and though the corrupt practice of bribery, as an election offence, must be proved with the same type of cogent evidence as would be necessary for the prosecution to bring home a charge of bribery as a criminal offence, yet the trial of an election petition is not a criminal trial governed by the provisions of the Code of Criminal Procedure. So far as the question of pleadings is concerned, the petitioners must be confined to the case actually set up by them in the election petition and they cannot go beyond the pleadings except after getting the petition amended, provided such an amendment is permitted under the Representation of People Act. In any case, the evidence of Kartar Chand and Pritam

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Singh is not cogent or reliable enough on which we could come to a conclusion, more or less beyond all reasonable doubt, that Shri Karam Singh Kirti did make an attempt to pass the money. As already stated, the evidence of these two witnesses is not quite consistent, but materially differs with regard to the details of the actual conversation that took place between the parties. It runs counter to the version given in the petition and the entire story appears to be unnatural and improbable. As was held by a Division Bench of this Court to which one of us was a party in *R. B. Tyal v. Bishan Sarup etc.*, (1), there is, in fact, in these election petitions, so far as they relate to charges of corrupt practices, a very great similarity of a criminal trial" and consequently it must be taken that the burden lies fairly heavy on the petitioners to prove the charge of a corrupt practice more or less with the same amount of certainty as would be required from the prosecution to prove a criminal charge of bribery. We have no doubt in our mind that on this unsatisfactory evidence of Pritam Singh and Kartar Chand no conviction could be recorded by any criminal Court, for a charge of bribery against Shri Karam Singh Kirti. We are, therefore, of the view that on the record it has not been established that Shri Karam Singh Kirti made any offer of or paid any money to Kartar Chand to procure the withdrawal of the latter from the contest. In view of this finding it is hardly necessary to go into the question, which was argued at length before us, whether the circumstances of this case and the evidence on the record indicated that Shri Karam Singh Kirti was an agent of Shri Gurbanta Singh and whether in offering a bribe he was acting as such or was doing so with the consent of Shri Gurbanta Singh. Nor it is necessary

(1) F.A.O. No. 164 of 1958

to go into the further question whether this offer of bribe was in the interest of Shri Gurbanta Singh.

The learned Election Tribunal came to the conclusion that Shri Karam Singh Kirti acted as an agent of Shri Gurbanta Singh on the basis of an answer given by Shri Gurbanta Singh that he as well as Shri Karam Singh Kirti were the official nominees of the Congress party and they had "enjoyed mutual assistance" and they were fully co-operating with each other in the election and that, Shri Gurbanta Singh personally visited very few places and his son worked for him, and Shri Karam Singh Kirti visited other places. The other factor which the learned Tribunal took into consideration was that the withdrawal of Kartar Chand, who was a candidate for the reserved seat, was "primarily" in the interest of Shri Gurbanta Singh. It was urged on behalf of Shri Gurbanta Singh that both the candidates who are put up to fight the election by the Congress from a double-member constituency are allotted the same symbol, namely, "two bullocks with a yoke on" which is the symbol assigned to the nominees of the Congress party by the Chief Election Commissioner of India and consequently whether a candidate is for the general seat or for the reserved seat, he has to make the propaganda in the constituency that the voters should put the ballot papers in the box or boxes bearing the above-mentioned Congress symbol and that in that sense the two candidates have to co-operate with each other. Otherwise, too, under the discipline of the party, the candidates belonging to the same party have to give mutual support. That, it was urged, does not imply that the two candidates become agents for each other, nor does it imply that either of them has an authority to commit even criminal offences or corrupt practices on behalf of the other. In the second place,

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it was urged that the withdrawal of a candidate for the reserved seat benefits not only the other candidates for the reserved seat but also benefits the candidates for the general seat. In a double-member constituency there is no prohibition in two scheduled caste candidates being returned if both of them happen to get the highest number of votes at the poll. Thus, Shri Karam Singh Kirti in making an effort to get Kartar Chand out of the way may be making sure that Kartar Chand, who claimed to have influence in as many as eighty villages, may not jeopardise his chances of success by both Gurbanta Singh and Kartar Chand coming at the top. We feel that there is force in this argument. We do not consider that the mere fact that the two candidates have enjoined mutual assistance would render one of them liable for the illegal or criminal acts of the other as being his agent. There must be some further evidence, apart from their having agreed to help each other, being the candidates set up by the same political party, to enable the Court to draw an inference that an illegal act done by one was with the consent or authority of the other. No such inference can be drawn from the fact that the candidate whose withdrawal had been secured was the one for the reserved seat. Though this withdrawal may be *prima facie* for the benefit of Shri Gurbanta Singh, who was a candidate for the reserved seat, yet this may be as well for the benefit of the candidate for the general seat.

The alternative case found by the learned Tribunal, that, even if Shri Karam Singh Kirti did not act as an agent, the withdrawal procured by him by offering bribe was for the benefit of Shri Gurbanta Singh and that the result of the election had been materially affected, cannot be sustained

under any circumstances because there is no evidence of the result of the election having been materially affected. There is no evidence on the record to show how the withdrawal of Kartar Chand had affected the ultimate result of the election. It was for the petitioners to establish that, if the withdrawal of the candidature of Kartar Chand had not been secured, Shri Gurbanta Singh would not have been successful. That is the only material way in which the result could have been affected. The mere fact that the majority by which Shri Gurbanta Singh defeated his next rival candidate would have been reduced, would not be taken to have materially affected the result of the election. It may be difficult or well-nigh impossible for the petitioners to establish by positive evidence the fact that the result has been materially affected and this may operate harshly on the petitioners, but section 100(1)(d) (ii) makes it imperative for the Tribunal, before it can set aside an election in such cases, to come to the conclusion that the "result of the election, in so far as it concerns a returned candidate, has been materially affected by any corrupt practice committed in the interest of the returned candidate by a person other than that candidate or his election agent or a person acting with the consent of such candidate or election agent". See *Vashisht Narain v. Dev Chandra* (1), which was a case of a wrongful acceptance of the nomination paper of a candidate. We have no manner of doubt that in the present case there is nothing to show that the withdrawal of Kartar Chand's candidature has materially affected the result of election of Shri Gurbanta Singh.

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This leaves the question of the disqualification of Shri Karam Singh Kirti at the time of the election to be considered. Paragraphs 4 and 5 of the

(1) A.I.R. 1954 S.C. 513

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election petition deal with this matter. The relevant portions of these paragraphs are as follows :—

“4. * * * he (Shri Karam Singh Kirti) “was disqualified from being chosen as, and for being, a member of the Legislative Assembly of Punjab State, because in trust for him and for his benefit he had a share and an interest in a contract besides other subsisting contracts for the supply of goods (amplifiers) with the Punjab State Government through * * * * the Vocational Training Centre at Palwal * * * entered into with Messrs G.W. Balkar and Company * * * * a registered partnership concern of which respondent No. 2 Shri Karam Singh Kirti has been and continues to be a partner.

5. * * * Shri Karam Singh Kirti made an attempt to show that immediately prior to the submission of his nomination paper * * * he had severed his connection with the aforesaid firm of Messrs G. W. Balkar and Company of which *admittedly* he was a partner. He has signally failed in this attempt because the documents prepared and produced on behalf of Shri Karam Singh Kirti * * * before the Returning Officer at the time of the scrutiny of his nomination papers to prove his alleged separation from Messrs G. W. Balkar and Company, clearly show that the alleged transaction of separation is purely collusive, a hoax, a sham, a colourable and a fraudulent one. Besides the alleged transaction is not complete for want of compliance with legal formalities.”

In reply to these paragraphs it was stated on behalf of Shri Karam Singh Kirti in his written statement that he had completely severed his connection on 25th of January, 1957, and that the transaction of separation was complete in all respects and due intimation thereof was given to the Registrar of Firms, and that the documents produced by him before the Returning Officer clearly established this fact. He further stated that even Messrs G. W. Balkar and Company (hereinafter referred to as the firm) had no subsisting contract with the Punjab Government. In the light of these pleadings issues Nos. 1 to 3 were settled as follows :— —

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- (1) Had Messrs G. W. Balkar and Company on the relevant date any subsisting interest in any contract with the Punjab State Government through the organisation known as Vocational Training Centre at Palwal?
- (2) Had Karam Singh respondent No. 2 on the relevant date any subsisting interest in the firm of Messrs G. W. Balkar and Company?
- (3) Had not Karam Singh respondent No. 2 legally and effectively severed his connection with the firm G. W. Balkar and Company? If so, from which date such severance took effect?

On the record it has been clearly established and this is not being disputed by either Party—that the Controller of Stores invited tenders on the 6th of August, 1956, for seven items to be quoted f.o.r. Loharu. In response to this the firm quoted, on 16th of August, 1956,—*vide* their letter GW/97/2441 (Exhibit P. 1.) for five of these items including Balkar audio amplifier for which the price quoted was Rs. 260 f.o.r. Loharu. It was further stated

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that every Balkar product was sold under year's free service guarantee. On 21st of December, 1956,—*vide* Exhibit P. 12, the Controller of Stores, Punjab, asked the firm to supply immediately one piece Balkar audio amplifier at Rs. 260 f.o.r. Gurgaon and to despatch the same to the District Industries Officer, Gurgaon. In this letter the Controller made reference to the offer of the firm made in its letter dated the 16th of August, 1956, referred to above. On 19th of January, 1957, the firm despatched one amplifier to the Manager, Government Vocational Training Centre, Palwal, and the relevant railway receipt was despatched to him with the covering letter of the firm dated the 22nd of January, 1957 (Exhibit P. 13, in which reference was made to the letter of the Controller dated the 21st of December, 1956, placing the order for the aforesaid item. A bill for Rs. 257-5-0 was sent towards the price of this article. There is no explanation as to why the price charged was Rs. 2-11-0 less than that quoted but obviously this represented the railway freight which was to be paid by the consignee and which was really to be borne by the firm because, according to the order, the supply was to be made f.o.r. Gurgaon. This amount of the bill, less Rs. 1 as the bank commission, was paid by means of a draft for Rs. 256-5-0 by the Manager, Government Vocational Training Centre, Palwal,—*vide* his letter, dated the 5th of March, 1957, which payment, according to the evidence on the record, was duly received by the firm on the 8th of March, 1957. This was the only subsisting contract which, according to the petitioners, existed between the Punjab Government and the firm, at the relevant time.

It is further admitted that the nomination papers by Shri Karam Singh Kirti were filed before the Returning Officer on the 29th of January,

1957, the date of scrutiny was the 1st of February, 1957, and the result was actually declared on the 9th of March, 1957.

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With regard to this contract, two points were urged before the learned Tribunal as well as before us. In the first instance, it was urged that the aforesaid contract did not fall within the mischief of section 7(d) of the Representation of People Act. Section 7(d) provides:—

“A person shall be disqualified for being chosen as, and for being, a member of
* * * the Legislative Assembly
* * * of a State:—

if, whether by himself or by any person or body of persons in trust for him or for his benefit or on his account, he has any share or interest in a contract for the supply of goods to *
* * the appropriate Government.”

The argument of the learned counsel for Shri Karam Singh Kirti was that the contract for the supply of the amplifier aforesaid was not “a contract for the supply of goods”, but was one solitary case of sale of specific goods and that the contract must be deemed to have been completed so far as the firm was concerned as soon as the goods had been despatched and that thereafter the relationship between the firm and the Government was merely that of a creditor and a debtor. He further urged that this supply of the amplifier was not in pursuance of the offer made by the firm on the 16th of August, 1956. The other point urged was that, according to sub-clause (a) of sub-section (1) of section 100 of the Representation of People Act, the disqualification of a returned candidate which

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affects his election must be present "on the date of his election", and that the date of election must be taken to be the date on which the result is declared, i.e., the 9th of March, 1957, in this case and it is clear that there was no subsisting contract after the payment had been made by the Government on the 8th of March, 1957, for the goods supplied by the firm, and that, consequently, on 9th of March Shri Karam Singh Kirti was not affected by any disqualification on account of the aforesaid contract even if it be taken that he was a partner of this firm or had an interest in this firm.

We feel that there is no force in either of these two contentions. As has already been stated, the Controller placed an order with the firm on the basis of the tender submitted by the firm on 16th of August, 1956, quoting the price of the amplifier as Rs. 260 and offering a guarantee for one year's free service. It is further clear from the letter, Exhibit P. 13, by which the railway receipt was despatched, that the supply was made with reference to the aforesaid order placed by the Controller and there is no manner of doubt that the supply was made in accordance with the offer of the firm for the supply of this type of articles. The mere fact that the original offer was f.o.r. Loharu and the Controller had asked the firm to supply one amplifier f.o.r. Palwal would not make much difference, because by the supply of the amplifier the firm agreed to this minor modification of the terms and it was not shown that there was any appreciable difference between the railway freight from Jullundur City to Loharu and Jullundur City to Palwal or Gurgaon. In any case, in our view the order placed by the Government and accepted by the firm constitutes a distinct contract and the above mentioned contract for the supply of the goods must be treated as subsisting till the payment for the goods has actually been made. The

contract does not terminate, so far as the firm is concerned, after the supply has been made and it is wrong to say that thereafter the relationship between the Government and the firm is merely that of a creditor and a debtor. (See *C. Vithaldas v. Moreshwar Parashram*, (1). This decision of the Supreme Court also interpreted section 7(d) of the Representation of People Act and it was observed as follows:—

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“Now the words of the section are ‘shall be disqualified for being chosen.

The choice is made by a series of steps starting with the nomination and ending with the announcement of the election. It follows that if a disqualification attaches to a candidate at any one of these stages he cannot be chosen.”

Similarly, the words of sub-clause (a) of sub-section (1) of section 100 are:—

“* * * a returned candidate * * * shall be disqualified to be chosen.”

In view of the above, therefore, we must uphold the finding of the learned Tribunal that there was a subsisting contract between the firm and the Punjab Government, and if it is found that Shri Karam Singh Kirti was a partner of the firm, as was alleged in the petition, he would be disqualified to be chosen as a member of the Punjab Legislative Assembly.

We have, therefore, to see what was the position of Shri Karam Singh Kirti *vis-a-vis* the firm on the date he put in his nomination papers on the

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29th of January, 1957. The position of this firm, as has been brought out in the evidence of Shri Karam Singh Kirti, is that to begin with Shri Karam Singh Kirti carried on the business of this firm as a joint Hindu family business. He styled himself as the proprietor of the firm obviously because he was the *karta* of the family. By the year 1955 this joint Hindu family firm *inter alia* manufactured items of sound equipment and was able to get a contract for the supply of some of these items to the Central Government. In order to have more finances to be able to make the supply of the goods to the Central Government a partnership firm under the Indian Partnership Act was formed on 2nd of January, 1956,—*vide* Exhibit P. 36. Once Thakar Singh, a relation of Shri Karam Singh Kirti, was to be a sleeping or financing partner and was to contribute Rs. 40,000 towards the capital of the new firm, the other two partners being Shri Karam Singh Kirti and his eldest son, Gurdip Singh Bolina. This new firm was to take over the joint Hindu family business which was being carried on under the name and style of Messrs G. W. Balkar and Company as a going concern and was to carry on the work under the same name. In lieu of the assets of the joint Hindu family firm, Karam Singh Kirti was to be credited with a sum of Rs. 42,000 and Gurdip Singh Bolina with Rs. 14,000 as the capital contributed by them and the shares of the partners in the profit and loss of the firm were to be,—Thakar Singh and Gurdip Singh Bolina, 5/16 each and Shri Karam Singh Kirti, 6/16. It was recited in the deed that there had been a partial partition of the family as a result of which Gurdip Singh Bolina had separated from Shri Karam Singh Kirti. In due course, intimation under section 69 of the Indian Partnership Act was given to the Registrar of Firms showing Shri Karam Singh, Gurdip Singh Bolina and

Thakar Singh as the three partners of this newly-constituted firm. This firm continued doing the business and the first balance-sheet was drawn up as on 30th of June, 1956, which showed the cash contributions made by Thakar Singh to be Rs. 30,103-12-0; his share of profit which was added to his account came to Rs. 15,965-12-9; his loan account which was also added to his capital account came to Rs. 7,304; and thus his total contributions to the capital account were shown at Rs. 53,373-8-9. The firm continued business in this manner till the 25th of January, 1957, when two deeds were executed by which Shri Karam Singh Kirti purported to sever his connection as a partner in the firm. By deed, Exhibit R. 11, the parties agreed to modify the term in the original deed, Exhibit P. 36, which required a partner, desiring to dissolve the firm by going out, to give one month's notice to the other partners, and the partners agreed to permit Shri Karam Singh Kirti to withdraw from the partnership with immediate effect without giving such a notice. By the other deed, Exhibit R. 5, purporting to be a dissolution of partnership, the partnership created on the 2nd of January, 1956, under the name and style of Messrs G. W. Balkar and Company was dissolved by mutual consent as from that date and it was provided that thereafter the aforesaid business under the same name would be continued by the remaining two partners, namely, Gurdip Singh Bolina and Thakar Singh. It was further recited that the parties had gone into the accounts of partnership and it was agreed that the capital standing to the credit of the retiring partner, inclusive of his share of profits, up to that date, would be paid to him within three months from the date of the execution of the deed, failing which the continuing partners would become liable to pay 12 per cent per annum interest on the total amount due to him. In view of the

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agreement to pay back capital as aforesaid, Shri Karam Singh Kirti assigned his interest in the partnership as well as his right to the goodwill to the remaining partners. It may be stated here that under the original deed, Exhibit P. 36, on dissolution of the firm, the goodwill belonged to Shri Karam Singh Kirti alone. Intimation about this change in the constitution of the partnership was sent to the Registrar, *vide* Exhibit P. 9, which is dated the 25th of January, 1957, but was received in the office of the Registrar of Firms on the 31st of January, 1957. It is mentioned in this document that Shri Karam Singh had ceased to be a partner with effect from the 25th of January, 1957. The firm had accounts with the Central Bank and the New Bank of India and consequently intimation was given to these two banks also. Intimation to the former was sent under the signature of Shri Karam Singh on 25th January, 1957, (Exhibit P. 20) and the stamp of the bank shows that the same was received under diary No. 357 on the same date. This fact is deposed to by an official of the Central Bank, P. W. 12. The letter addressed to the New Bank of India, Exhibit P. 15, is signed by Gurdip Singh Bolina and is stated to have been received on the same day though the date of the receipt is not marked on this document. This fact is deposed to by Jagan Nath, Accountant of the Bank who appeared as P. W. 2.

On behalf of Shri Karam Singh Kirti the stamp vendor Rattan Chand R.W. 3 and Gurdev Singh, one of the attesting witnesses of the documents, Exhibits R. 5 and R. 11, were examined and they were cross-examined at length apparently to show that these two deeds were not actually executed on the date on which they purported to have been executed. The learned Tribunal, however, held the execution duly proved and before

us, it was not disputed that these were executed on the 25th of January, 1957. The learned Tribunal, while holding the due execution of the partnership deed dated the 2nd of January, 1956, Exhibit P. 36 to have been proved, came to the conclusion that the aforesaid deed was bogus and that, in fact, the firm G. W. Balkar and Company, as created by that deed, never came into existence and that the aforesaid firm in effect continued to be a joint Hindu family business, and that Thakar Singh was not a partner in that firm and his name was merely introduced to get benefit of income-tax. That being the case, it was held that the so-called dissolution deed dated the 25th of January, 1957, Exhibit R. 5, was of no effect and that, as a matter of fact, Shri Karam Singh Kirti continued to take and retain interest in the business of the firm even after that date. We will deal with these two matters.

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As has already been indicated the allegations in paragraphs 4 and 5 of the election petition did not make out a case that Messrs G. W. Balkar and Company, immediately before the 25th of January, 1957, was a joint Hindu family firm. On the other hand, the allegations clearly were that it is a registered partnership firm of which Shri Karam Singh Kirti was a partner. The only ground given, for treating Shri Karam Singh Kirti as a continuing partner, was that the attempt made by him to get out the firm did not, in law, result in his ceasing to be a partner and that the documents produced by him before the Returning Officer were sham, bogus and of no effect, etc. The case set up in the petition is thus quite different from the one that has been found for the petitioners by the learned Tribunal. It was urged on behalf of the petitioners (respondents in this appeal) that the fact that there had been no real partition between

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the members of the joint Hindu family, of which Shri Karam Singh Kirti was the *karta* and that, in fact, Thakar Singh was a bogus name and he was not a real partner, came to their knowledge only from the deed, Exhibit P. 36, which was not produced before the Returning Officer, and from the statement made by Shri Karam Singh Kirti. It was contended that it was from the statement of Shri Karam Singh Kirti that it came to be known that during the period between the 2nd of January, 1956, when the registered partnership was said to have been formed, and the 25th of January, 1957, when Shri Karam Singh Kirti purported to retire, no amount was withdrawn by Thakar Singh and the capital contributed by him was shown as having been paid in cash and not by cheque. On the other hand large amounts had been withdrawn by Shri Karam Singh Kirti for his household expenses and for other purposes. The only item of money debited to the account of Thakar Singh was the amount of income-tax paid by the firm on the profits due to the aforesaid Thakar Singh. It is true that it is on these matters that the learned Tribunal had mainly based its finding that Thakar Singh was not a real partner in the aforesaid firm and that, in fact, even after 2nd of January, 1956, the firm continued to be a joint Hindu family firm notwithstanding the execution of the deed, Exhibit P. 36, and the other formalities through which the so-called partners had gone. We are of the view that in law no evidence could even be allowed to be led—and at least the same cannot be looked at—for making out for the petitioners a case which they did not set up in the petition. There is obviously no issue on the point as to whether even after the 2nd of January, 1956, the firm continued to be a joint Hindu family firm and, in fact, without pleadings to that effect there could be no such issue. Their Lordships of the

Privy Council in *Kanda v. Waghu*, (1) quoted with approval the observations of Lord Westbury in *Eshenchunder Singh v. Shamachurn Butto* (2), which are as follows:—

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“It is an absolute necessity that the determination in a cause should be founded upon a case to be found in the pleadings or involved in or consistent with the case thereby made.”

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In *Saddik Mohamed Shah v. Mt. Saran* (3), their Lordships of the Privy Council held that no amount of evidence can be looked into upon a plea which was never put forward. In *Trojan & Co. v. Nagappa* (4), their Lordships of the Supreme Court observed that the decision cannot be based on grounds outside the pleadings of the parties and it is the case pleaded that has to be found. Thus even in a civil case, a party cannot be allowed to set up a case which is not pleaded and the rule must apply with equal, if not with greater force to an election petition.

There can be no suspicion about the execution of the deed, Exhibit P. 36. There was no election in view at the time and the mere fact that by converting the joint Hindu family business into a registered partnership under the Indian Partnership Act, the parties concerned could get some advantage from the income-tax levy, is no ground for holding that the registered partnership was a sham affair. There is nothing in law to prohibit the coparceners constituting a joint Hindu family converting the family business into a contractual partnership and thus legitimately get benefit from the

(1) A.I.R. 1950 P.C. 68
(2) M.I.A. 7 at p. 20
(3) A.I.R. 1930 P.C. 57
(4) A.I.R. 1953 S.C. 235

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income-tax otherwise payable by them as a joint Hindu family concern. We have in evidence that just before the new partnership was formed, the firm had been able to enter into a contract with the Central Government and thus it was quite natural for the firm to look for more finances to be able to cope with the orders which it expected to be placed with it as a result of this contract and there is nothing inherently wrong in Shri Karam Singh Kirti getting a well-to-do relation of his to join him and his eldest son as a partner in a contractual partnership.

The next contention of the learned counsel for the petitioners was that the deed, Exhibit P. 36, itself shows that there had been only a partial partition of the joint Hindu family of Shri Karam Singh Kirti. He had two more sons besides Gurdip Singh Bolina and Shri Karam Singh Kirti had joined the new firm in his personal capacity as a *karta* of the diminished joint Hindu family constituted by himself and his two younger sons. This, according to him, is further clear from the fact that whereas the share of Gurdip Singh Bolina was equal to Rs. 14,000, the capital which was treated to have been contributed by Shri Karam Singh Kirti Was Rs. 42,0000, being three times the share of Gurdip Singh Bolina, and that this represented the shares of Shri Karam Singh Kirti and his two sons. Supposing this to be correct, the learned counsel had to concede that there was nothing to prevent Shri Karam Singh Kirti to withdraw from the firm in the representative capacity in which he had joined and this he obviously did by the deed of dissolution, Exhibit R. 5. Some faint effort was made by the learned counsel to show that this dissolution deed was, in fact, not acted upon and in support of this argument he urged that intimation to the banks was not, in fact, given on the 25th of

January, 1957. So far as the Central Bank is concerned, we find the diary number and the date of the receipt of the intimation on the document in question. No reason has been given why the evidence of Om Parkash Sharma, P. W. 12, a junior officer of the Central Bank, in this respect should not be believed. Similarly, so far as P. W. 2 is concerned, he stated that the letter, Exhibit P. 15, was duly received on the 25th of January. We have also on the record that the intimation given to the Registrar was received in his office on the 31st of January, and the same must obviously have been sent much earlier. Once it is held that the dissolution deed, Exhibit R. 5, was actually executed on 25th of January and this is not being contested—it is obvious that the same was executed by Shri Karam Singh Kirti in order to sever his connection from the firm to escape his disqualification. There appears to be no reason why the execution should not have been followed up by the other necessary acts.

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The further argument of the learned counsel that new accounts were opened by this reconstituted firm with these banks in the month of April is of no consequence whatever. The accounts in both the banks were in the name of the firm and the continuing partners had to carry on the business even after the retirement of Shri Karam Singh Kirti in the same name. All that was necessary for the parties to do was to inform the banks that with effect from the 25th of January, 1957, Shri Karam Singh Kirti had ceased to be a partner. We have positive evidence on the record that, though a large number of cheques were issued by the firm after that date, there is none bearing the signature of Shri Karam Singh Kirti. It is, therefore, clear that after the execution of the dissolution deed, Shri Karam Singh Kirti took

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no part in the business and he had done all that could be done by him to sever his connection altogether with this firm.

Two further points were urged at showing the continued connection or interest of Shri Karam Singh Kirti with the firm. It is stated that on 6th of February, Shri Karam Singh Kirti transferred to his younger son, Manjit Singh, the entire capital that stood to his credit in the books of account of the firm as a result of his retirement and that thereafter this Manjit Singh, who was aged about 19 at that time, became a partner of the firm. It was urged that, as originally Shri Karam Singh Kirti was a partner in his representative capacity as a *karta* of the joint Hindu family constituted by himself and his two younger sons, the capital belonged to this joint Hindu family which Shri Karam Singh Kirti could not transfer in its entirety to Manjit Singh, and that consequently the transfer of this capital to Manjit Singh and the partnership of Manjit Singh must be treated to be in a representative capacity representing the whole family including Shri Karam Singh Kirti. We are afraid, we cannot agree with this contention. It is in evidence that his second son is a minor and he could act on his behalf and consequently even if it be taken that his capital was that of a joint Hindu family, there was nothing to prevent Shri Karam Singh Kirti from transferring the entire capital to one of his sons. He could certainly transfer his own share and, as a guardian of the minor son, he could also transfer his minor son's share. In any case, this transfer can be effective even as a family settlement.

The other point, which was also taken before the learned Tribunal was that Shri Karam Singh Kirti allowed a consent order to be passed against

him by the learned Liquidation Judge in Civil Miscellaneous No. 120 in Civil Original No. 55 of 1956. The proceedings in that case were started by the Mercantile Bank (in Liquidation) against the firm in respect of an account opened long before the contractual partnership had come into existence on the 2nd of January, 1956. The proceedings were against the firm through Shri Karam Singh Kirti, Proprietor. The matter was compromised and the firm agreed to pay a sum of Rs. 19,000 by monthly instalments of Rs. 1,000 each. The certified copy, Exhibit P. 50 in case N. 120 in Civil Original No. 55 of 1956, merely shows that the heading continued to indicate the Firm being represented through Shri Karam Singh proprietor. This apparently is the heading in which the account was opened originally and, while these proceedings were pending, Shri Karam Singh Kirti, as being one of the proprietors of the contractual firm, had signed the power-of-attorney engaging a counsel. The mere fact that the heading was not changed and the counsel continued to appear and that on 26th of April, 1957, the counsel, without putting in any separate power-of-attorney, agreed to the compromise, would show nothing. We sent for the original file from the record of this Court and we find that the statement was made in that case by the counsel, and there is nothing to indicate that Shri Karam Singh Kirti was himself present and had consented to the compromise.

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In view of the above, therefore, we feel that Shri Karam Singh Kirti ceased to be a partner of the firm, Messrs G. W. Balkar and Company, as from the 25th of January, 1957. Though under the Partnership Act, technically speaking, his liability to third parties continued, even thereafter,

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qua the debts and liabilities incurred by the firm, while he was a partner, yet in view of the clear stipulation in the deed that he was to be kept indemnified for such liabilities by the continuing partners, it is not of any consequence and it cannot be said that he had any interest, direct or indirect, in this firm, after 25th January, 1957, except that he was interested in the well-being of this firm in the sense that his two sons were partners in it. That, however, is not hit by the law. Shri Karam Singh Kirti was, therefore, not disqualified on the date of his nomination or at any time thereafter, and the finding of the learned Tribunal cannot be sustained on this point.

It may be stated here that at the end of the arguments the learned counsel for the petitioners put in an application for permission to amend paragraphs 4 and 5 of the petition so as to include the allegation of the firm G. W. Balkar and Company continuing to be a joint Hindu family firm. The amendment now sought to be made sets up a case quite different from the one that was originally set up and a fresh petition based on this ground would be hopelessly barred by time. We do not think that such an amendment can even be considered at this late stage.

For the reasons given above, therefore, we accept both these appeals and set aside the order of the learned Tribunal and dismiss the petition with costs throughout. Counsel fee Rs. 300 in each of the appeals, in this Court.

FALSHAW, J.—I agree.

B. R. T.