

# SUPREME COURT OF INDIA

Hari Shanker Prasad Gupta

Vs.

Sibban Lal Saksena

C.A.No.157 of 1954

(Mehr Chand Mahajan, C.J.I., B. K. Mukherjea, S. R. Das, Vivian Bose And Ghulam Hasan, JJ.)

28.09.1954

## JUDGEMENT

### **BOSE J. :**

1.The Election Tribunal of Gorakhpur has declared the election of the appellant Hari Shanker void under S. 100(2) Representation of the People Act, 1950 (XLIII of 1950) because of major corrupt practices within the meaning of S. 123(8).

2. The allegation in the petition is that the appellant engaged the services of a very large number of persons who were serving under the Government of the State of Uttar Pradesh. The Tribunal has examined each separate allegation in detail but it will not be necessary for us to do that as one case will suffice.

Among the many persons said to have been engaged as polling agents and canvassers is one Mangal Das. He is a Mukhia. The Tribunal holds that he not only acted as a polling agent but also canvassed. Mr. Chatterji contended on behalf of the appellant that was not the finding but we are clear that it is.

3. The Chairman and Shri Sukhdeo Prasad first say

"Ram Chander Prasad has.... stated on oath that he had seen Mangal Das Mukhia actually canvassing for respondent 1 (appellant here) at Rajmandi polling station on the polling day."

Later they say -

"Sri Diriyodhan Parsad (P. W. 3) actually saw Mangal Das,... Mukhia of Jarrar canvassing for respondent 1 during this election period."

Their conclusion on this part of the case is -

"We hold therefore that Sri Kishen Das and Mangal Das Mukhias .. worked as polling agents and as canvassers for respondent 1."

4. Mr. Chatterji relied on an earlier passage which says -

"We therefore come to the conclusion that the petitioner has proved in this case that Mangal Das

Mukhia .. worked as polling agent of respondent 1."

and he argued from this that the Tribunal assumed that a polling agent was also a canvasser. We are clear that that is not correct. In the passage just quoted the Tribunal were rebutting the argument advanced on behalf of the appellant that Mangal Das was not even his polling agent. They examine the evidence about this and hold that he was. They also examined the two witnesses who said that in addition to this he canvassed and their conclusion is that he also canvassed.

5. It is proved that Mangal Das was a Mukhia. Girish Chander, the Registrar, Qannungo Maharajganj, produced the register of Mukhias maintained in accordance with the provisions of the Land Records Manual. He proves from the register that Mangal Das was appointed a Mukhia of Jarar on 15-12-1947 and that he still holds office.

6. We were shown extracts from the Rules in accordance with which these registers are kept. They are Rules framed to accord with S. 45. Criminal P. C. which requires village headman to be appointed and sets out their duties. These headmen are appointed by the District Magistrate and can be dismissed by him. They are known locally as Mukhias but their official designation in the Rules is village headmen.

7. The Tribunal has examined the meaning of the words "serving under the

Government of any State" used in S. 123(8) at great length. We find it unnecessary to do so because the explanation enlarges the definition to include "a village headman or any other village officer, by whatever name he is called."

As it is proved that Mangal Das was a village headman, and in any event a village officer, he falls within the definition and so the appellant's action in permitting him to canvass for him is a major corrupt practice under S. 123(8) and that entails a declaration under S. 100(2)(b) to the effect that the appellant's election is void.

The argument that as Mangal Das was not paid by the State he cannot be in the service of the State is not sound, for payment is not that test. All that is required under the definition is that he should be a headman employed in the State, and that Mangal Das was.

8. No other point need be discussed. The appeal fails and is dismissed with costs.

Appeal dismissed.

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