SUPREME COURT OF INDIA

T.Nagappa

Vs.

T. C. Basappa

C.A.No.18-A of 1955

(S. R. Das, ACTG., C.J.I. and T. L. Venkatarama Ayyar, J.)

15.09.1955

JUDGEMENT

VENKATARAMA AYYAR, J. :-

1. The appellant was one of several candidates who stood for election to the Legislative Assembly of the State of Mysore from the Tarikera Constituency. At the polling which took place on 4-1-1952 he obtained 8093 Votes as against 8059 got by the first respondent, the others getting much less, and was duly declared elected. The first respondent then filed a petition for setting aside the election on the ground that the appellant had committed corrupt and illegal practices, and also prayed that he might himself be declared duly elected.

By its order dated 15-1-1953, the Election Tribunal, Shimoga held that three of the corrupt practices set out in the petition had been proved, viz:, (1) that one Ahmed Jan had with the connivance of the appellant transported voters to the polling booth in a service bus free of fare, (2) that the appellant secured the services of a Government servant, Parameswarappa to canvass for him at the election, and (3) that the return of election expenses made by him was false, and that the amount actually spent for the election exceeded the maximum allowed.

2. On these findings, the Tribunal declared the election of the appellant void, and further recorded a finding under S. 99 of Act No. XLIII of 1951 that he had committed the corrupt practices mentioned in Ss. l23 (6) and (8) and S. 124 (4), and had thereby become subject to the disqualifications referred to in Ss. 140 and 143 of the Act. It further held that the first respondent had secured the largest number of valid votes, and declared him duly elected.

The appellant moved the High Court of Mysore under Art. 226 for a writ of 'certiorari to quash the decision of the Tribunal, and by their judgment dated 11-l-1954 the learned Judges set it aside on the ground that the Tribunal had acted in excess of its jurisdiction in permitting certain amendments, and also that there were errors apparent on the face of the record. The first respondent then preferred an appeal to this Court, and by its judgment dated 5-5-1954 this Court set aside the order of the High Court on the ground that the order of the Tribunal was not bad either for want of jurisdiction, or for any error apparent on the face of the record, and in the result, the order of the Tribunal dated 15-1-1953 stood restored. Vide - 'T. C. Basappa v. T. Nagappa', AIR 1954 SC 440 (A).

3. The appellant has now come up to this Court by way of special appeal against the order of the

Tribunal dated 15-l-1953, and has urged the following grounds :

(1) The findings that the appellant had committed the corrupt practices mentioned in Ss. 123(6) and (8) and S. 124 (4) are not justified by the evidence;

(2) The Tribunal was in error in declaring the first respondent herein duly elected; and

(3) The Tribunal had acted illegally in recording a finding against the appellant that he had become disqualified under Ss. 140 and 143 without notice to him under the proviso to S. 99.

4. As regards the first contention, this Court has repeatedly held that ordinarily it will not in special appeal review findings of fact recorded by an Election Tribunal if there is evidence on which they could be reached. The appellant is unable to say that there is no evidence whatsoever in support of these findings, and we must therefore decline to interfere with them.

5. (2) It is next contended that having found that the appellant was guilty of corrupt practices, the Tribunal should have stopped with declaring his election void, and should not have passed the further order under S. 101 (b) declaring the first respondent duly elected. What the Tribunal has done is this : It found that about 60 voters were transported by Ahmed Jan to the polling booth, that of them 47 were Muslim women who voted for the appellant, and that if their votes were struck out, the margin of difference between the appellant and the first respondent which was only 34 votes would disappear, and the first respondent would have secured the largest number of valid votes.

This is in accordance with S. 101 (b) which enacts that if the, Tribunal is of opinion that but for the votes obtained by the returned candidate by corrupt or illegal practices, the petitioner would have obtained a majority of the valid votes, it could declare him duly elected. It is argued for the appellant that it cannot be said with certainty that the 47 votes recorded by the Muslim women would not have been recorded in favour of the appellant if corrupt practice had not been committed, that it would be mere speculation to hold that they would not be, and that therefore there is no legal basis for the finding that the first respondent got the majority of votes.

6. In support of this contention, reliance is placed on the observations of this Court in Jamuna Prasad v. Lachhi Ram AIR 1954 SC 686 at p. 689 (B) that "there is nothing to show why the majority of the first respondent's voters would have preferred the 6th respondent and ignored the 3rd and 4th respondents." There, the Court was considering the question, to which of the defeated candidates the votes obtained by the returned candidate by corrupt and illegal practices would have been given, and it held that it would be mere speculation to hold that they would have been given to the candidate next in the order of votes and not to the others, and as there was no certainty about the number of the votes, there was no basis on which the next candidate could be declared elected.

But, in the present case, the finding is that in all, 60 votes were recorded by the electors who were transported by Ahmed Jan, and of them at least 47 were recorded for the returned candidate. There is also the further finding that the voters would not have come to the polling booth from their village which was at a long distance but for the facilities furnished by Ahmed Jan. Even if all these votes were recorded in favour of the defeated candidate other than the first respondent, the lead of the latter would remain unaffected. On these facts, therefore, the observations in AIR 1954 SC 686 (B) have no application. The contention of the appellant, moreover, is not that these votes might have turned the scale in favour of any of the defeated candidates other than the first respondent but in favour of himself. This is contrary to what is provided in S. 101 (b) of the Act, and there is

nothing in AIR 1954 SC 686 at p. 689 (B) to support it. We must also observe that this question is really concluded by the observation of this Court in AIR 1954 SC 440 (A) that,

"If the votes of at least 40 or 50 of these persons be left out of account as being procured by corrupt practice of the first respondent, the latter's majority by 34 votes would be completely wiped out and the petitioner (present lst respondent) would gain an undisputed majority".

No other argument its urged in support of this contention, which must accordingly be rejected.

7. (3) It was finally argued that the finding of the Tribunal that the appellant had become subject to the dis-qualifications mentioned in Ss. 140 and 143 was bad, because no notice was given to him as required by the proviso to S. 99. We have held in 'Civil Appeal No. 21 of 1955 (SC) (C)' that no fresh notice under the proviso need be given to a party to the election petition in respect of the very charges which are the subject-matter of enquiry therein and as to which he already had notice.

The corrupt practices which have been found to entail the disqualifications under Ss. 140 and 143 are the very matters which formed the subject-matter of the election petition, and as the appellant had already had ample opportunity to defend himself against those charges, there was no need for a further notice to him under the proviso. We have also held in the said appeal that in making recommendations with reference to the disqualifications mentioned in Ss. 141 to 143, the Tribunal exercises an advisory jurisdiction, and the proviso has no application to it. Following this decision, we must overrule this contention.

8. In the result, the appeal fails and is dismissed with costs.

Appeal dismissed.

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