

SUPREME COURT OF INDIA

Bhagwan Datta Shastri

Vs.

Ram Ratanji Gupta

C.A.No.204 of 1955

(Vivian Bose, B. Jagannadhadas, B. P. Sinha, S. J. Imam and N. Chandrasekhara Aiyar, JJ.)

17.02.1956

JUDGEMENT

JAGANNADHADAS, J.:

1. These are two appeals by special leave against two orders of the Election Tribunal, Vindhya Pradesh at Rewa, dated 26-4-1954 and 31-5-1954, which arise out of the election to the House of People (Lok Sabha) from Shahdol-Sidhi constituency of Vindhya Pradesh. It is a double member constituency, one being a general seat and other being a reserved seat for a member of the scheduled tribes of Vindhya Pradesh. Twelve nominations were filed for the general seat and three for the reserved seat. The Returning Officer, after scrutiny, held only five out of the twelve nominations to the general seat to be valid and rejected the rest. Out of the three for the reserved seat, he declared only one, namely, that of one Randaman Singh, to be valid and rejected the rest. As a result thereof the said Randaman Singh was declared elected without contest to the reserved seat. Out of the five candidates whose nominations for the general seat were held valid, two subsequently withdrew in time. Accordingly the polling was held for the remaining three candidates in the various polling stations of the constituency on dates between the 11th and 19th January, 1952. These three candidates obtained votes as follows :

Bhagwan Datt Sastri 71,589

Ram Ratan Gupta 56,585

Puranmal 34,990

Consequently Bhagwan Datt Shastri (hereinafter referred to as the appellant) was declared elected, and the same was published in the Gazette dated the 14th February, 1952. Thereupon two election petitions were filed, both on the 24th April, 1952, contesting the validity of the election. The first (Election Petition No. 185 of 1952) was filed by four voters of the constituency. The relief asked for was the setting aside of the election of the appellant on various grounds set out therein and the declaration of Ram Ratan Gupta as the validly elected candidate. The second petition (Election Petition No. 187 of 1952) was filed by three other voters of the same constituency and also prayed that the election of the appellant should be set aside. It asked also for a further relief, viz., that the election of Randaman Singh the candidate returned unopposed for the reserved seat should also be set aside. In this petition the grounds alleged against the appellant's election were partly the same as those which were set out in the earlier petition. But there was added another substantial ground.

This was that out of the nominations for the general seat which were rejected as being invalid on scrutiny by the Returning Officer, the rejections of the nominations of three candidates, viz., Baboo Lal Udaniya, Deep Narain and Rajkishore Shukla, were erroneous in fact and in law and that as a result thereof the election - it was alleged - was materially affected. It was on the basis of this allegation that the relief asked for in this petition was not merely to set aside the election of the appellant but also for the setting aside of the entire election which would result in the unseating even of the reserved-seat candidate who was declared elected unopposed.

2. Common evidence was taken by consent of parties in both these petitions. Quite a large number of issues were raised in each of the petitions, some of which were common. A good many out of those issues were found in favour of the appellant. But only three of the issues in the first petition relating, respectively, to (1) undue influence, (2) use of vehicles for carrying voters to the polling station, and (3) appeal to voters on grounds of caste, race, community or religion, were found against the appellant. In the other petition, in addition to the findings against the appellant in respect of issues corresponding to these three, a further issue relating to the wrongful rejection of nomination papers and the election being materially affected thereby, was found against the appellant. As a result of all these findings, the election of the appellant was set aside. The additional relief asked for in the first petition, viz., that Ram Ratan Gupta be declared elected was rejected as also the additional relief asked for in the second petition, viz., that Randaman Singh was to be unseated. As a result, the Election Tribunal maintained the election of the reserved seat candidate but ordered a fresh election in the constituency for the general seat.

3. There is no question raised before us as to the correctness of the order of the Election Tribunal in so far as it upheld the election of the reserved seat candidate and rejected the relief asked for that Ram Ratan Gupta be declared elected. The only common question therefore now raised in both the appeals is as to the correctness of the Tribunal's order in each of the election petitions setting aside the appellant's election. Since at this stage there is only one common question arising in both the appeals it is convenient to treat both the appeals together by a common judgment. This judgment accordingly disposes of both the appeals.

4. The findings of the Election Tribunal which resulted in the election of the appellant being set aside are the following.

1. Leaflets like Ex. P-3 were circulated in numerous villages of Shahdol district to the effect that every member belonging to the Gond community who would not vote for the appellant would be ex-communicated. Such distribution was by various red-capped workers who were members of the Socialist Party. The appellant having stood as a candidate on the ticket of the Socialist Party, they were virtually agents of the appellant. Thus the appellant was guilty of the major corrupt practice of undue influence under proviso (a)(i) and (ii) of S. 123(2) of the Representation of the People Act, 1951 (Act XLIII of 1951) (hereinafter referred to as the Act).

2. Leaflets like Ex. P-6, the later portion of which contained a clear and systematic appeal to the voters to vote (or refrain from voting) on grounds of caste, race, community or religion and contained a threat of injury, were widely distributed in the entire district of Sidhi and Tahasil of Mauganj in Rewa district by workers of the Socialist Party, who were virtually in the position of agents of the appellant. This constituted both a major corrupt practice under proviso (a)(i) and (ii) to S. 123(2) and a minor corrupt practice under S. 124(5) of the Act.

3. On 11-1-1952 (one of the polling dates) quite a number of voters from two villages in the

constituency were brought to one of the polling stations by the use of one motor truck which belonged to Achutanand, a Socialist Party candidate for the same constituency of the State Legislative Assembly, polling for which also was going on simultaneously at the various polling stations. The voters were brought by Achutanand himself as well as by other Socialist Party workers. This was with the knowledge and connivance of the appellant and constituted a major corrupt practice, within the meaning of S. 123(6) of the Act.

4. The nominations of the three persons above mentioned, viz., (1) Baboo Lal Udaniya, (2) Deep Narain, and (3) Rajkishore Shukla, were wrongly rejected and the rejection materially affected the result of the election.

5. The correctness of all these findings was vigorously canvassed before us both on the evidence and on the law relating thereto. It may be mentioned that each one of these, if held proved, was by itself enough to invalidate the election of the appellant. The first three of the above findings which fall under S. 123 of the Act and are major corrupt practices would, if accepted, bring about the setting aside of the election by the Tribunal under S. 100(2)(b) of the Act. The finding in respect of the fourth, if upheld, would bring about the voidness of the election under S. 100(1)(a) of the Act.

6. So far as findings 1, 2 and 3 above are concerned, the questions involved are substantially questions of fact. But they have been argued before us with some insistence on the ground that they were mixed up with questions of law. The main questions of law that were said to arise with reference to these three findings are:

1. As regards the alleged major corrupt practice based on Ex. P-3, the election petitions did not furnish the necessary particulars and therefore the enquiry and finding relating thereto was without jurisdiction.

2. As regards the corrupt practices based on Exs. P-3 and P-6, the main evidence is that of P. W. 73, and the appellant was not afforded a fair opportunity to rebut his evidence.

3. As regards all the three findings 1, 2 and 3, set out above, no direct connection of the appellant is shown and the findings of the Tribunal are based on a special theory as to agency in election matters which is erroneous in fact and in law.

7. In order to appreciate the objections raised before us as regards the correctness of finding No. 4 above enumerated, it is necessary to set out the grounds on which, the respective nominations were rejected by the Returning Officer. They were as follows:

(a) Baboo Lal Udaniya was lawyer for the State Railway under the terms of a standard agreement (marked before the Tribunal as Ex. XA-2). His employment constituted an "office of profit under the State" and he was accordingly disqualified under Art. 58(2) of the Constitution.

(b) The nomination paper of Deep Narain contained the following defect. The name of the constituency was shown as "Shahdol-Sidhi Mauganj Constituency" instead of as "Shahdol-Sidhi Districts and Mauganj Tahsil of Rewa District" as specified in the Delimitation Order.

(c) The nomination of Rajkishore Shukla was defective as follows:

(i) The nomination paper was incomplete when the candidate signed it, the proposer and seconder having signed it later. (It may be mentioned that the nomination paper when presented to the

Returning Officer admittedly contained all the three signatures).

(ii) The security deposit under S. 34 of the Act was made by one Ram Gopal Varma and the receipt therefore filed with the nomination paper did not mention that the deposit was made on behalf of the candidate, Rajkishore Shukla.

8. The Tribunal held that the rejection of the nominations on the above grounds was erroneous. It also held, following certain previous decisions of various Election Tribunals, that in such a situation there is a presumption that the result of the election is materially affected. Learned counsel for the appellant strongly contested the conclusions of the Tribunal in this behalf. So far as the grounds for rejection of the nominations of Deep Narain and Rajkishore Shukla are concerned, we are satisfied that the rejection by the Returning Officer was erroneous. Indeed we did not gather that learned counsel for the appellant seriously contested the Tribunal's view in this behalf. The main emphasis of the learned counsel on this part of the case was that the view taken by the Tribunal was erroneous in law in so far as it held (1) that Baboo Lal Udaniala held an "office of profit" and (2) that in cases where the nomination of a candidate has been wrongfully rejected there is no presumption that the result of the election is materially affected. Thus, out of the four findings of the Tribunal against the appellant above set out, three relate to alleged corrupt practices and the fourth relates to the alleged wrongful rejection of nominations. It will be convenient to take up first, those relating to the alleged corrupt practices.

9. I. Major corrupt practice relating to the wide distribution of pamphlets like Ex. P-3: A number of objections have been taken to the finding in this behalf. It is first contended that the allegation made in the election petition was extremely vague and that no particulars were furnished and that accordingly the Tribunal erred in allowing this allegation to be enquired into. The allegation in this behalf is contained in paragraph 12(g) of the Election Petition No. 185 of 1952 before the Election Tribunal which is as follows:

"The respondent No. 1 himself and through his agents, canvassers, workers and supporters committed the corrupt practice of undue influence in the form of -

(g) having circulated leaflets in numerous villages of Shahdol district that every elector belonging to the Gond community who would not vote for respondent No. 1, would be ex-communicated. The particulars are detailed in list B annexed hereto. (Copy of leaflet annexed hereto)".

It is pointed out that the particulars in list B relate only to sub-paragraphs (a) to (f) of paragraph 12 and that there were no particulars at all furnished as regards this particular allegation contained in sub-paragraph (g). It is also pointed out that objection was specifically taken in paragraph 4 of the written statement of the appellant which is as follows:

"No particulars have been given for the allegation contained in paragraph 12 (g) hence it should be struck off".

In spite thereof, the matter was kept in suspense until the concluding stage as appears from the following passage in the judgment of the Tribunal.

"Lastly in para 12(g) it was simply alleged that leaflets were circulated in numerous villages of Shahdol district to the effect that every member belonging to the Gond community who would not vote for respondent No. 1 would be ex-communicated. No particulars whatsoever about these leaflets, their signatories, or the villages where and the dates on which this form of undue influence

was alleged to have been exercised have been given in any para of list B in spite of being so pointed out at the earliest stage by the respondent No. 1 in para 4 of his written statement wherein he pleaded for this allegation to be struck off on this score. At first, we were indeed inclined to strike off this para for want of necessary particulars and to shut out all evidence and arguments adduced thereon".

The decision of this Court in *Bhikaji Keshao Joshi v. Brijlal Nandlal Biyani*, 1955-2 SCR 428: (S) AIR 1955 SC 610) and in particular the following passage at p. 441 (of SCR): (at p. 616 of AIR) is brought to our notice.

"There can be no reasonable doubt that the requirement of full particulars is one that has got to be complied with, with sufficient fullness and clarification so as to enable the opposite-party fairly to meet them and that they must be such as not to turn the enquiry before the Tribunal into a rambling and roving inquisition".

Relying on the above, learned counsel for the appellant urged that in the absence of adequate particulars as in this case, the Tribunal had no jurisdiction to admit evidence in this behalf or to give a finding thereupon. Now there can be no doubt that the requirement of full particulars is of paramount importance, in cases of this kind as in cases of the ordinary courts based on allegations of fraud or undue influence. But unlike the one in the above decision of this Court relied upon, in which the question that arose was as to the validity of an order dismissing the entire election petition on the preliminary ground of absence of particulars, the question in this case is different. This is a case where notwithstanding the absence of particulars, the evidence was allowed to be given and taken. The question in such a case would not be one of absence of jurisdiction but as to whether there has been any material prejudice occasioned by the absence of particulars. It is in that light that the validity of the objection raised by the appellant in this behalf before us has to be judged. It is, therefore, necessary to scrutinise the nature of the evidence on which this finding had been arrived at and to see whether the appellant had a fair opportunity of meeting it. The finding is based upon the printed pamphlet, Ex. P-3, and on the evidence of P. Ws. 10, 11, 12 and 73. Ex. P-3 is a pamphlet which, as the election petition shows, was an enclosure to that petition itself, when filed before the Election Commission. The pamphlet itself purports to have been signed by three individuals, Sukh Sen Raj Gond, Thakur Din Raj Gond, Bharosa Raj Gond, and shows on the face of it Kumar Printing Works, Daraganj, Prayag, as the printers. P. W. 73 is the Proprietor of Kumar Printing Works. It appears also from the record that on 5-1-1953, a number of interrogatories were served on the appellant on behalf of the election petitioners out of which the following may be noticed.

"24. (a) Is it not a fact Sukhsen, Thakurdin and Bharosa Rajgonds were your workers and canvassers in the district of Shahdol?

(b) Was not Sukhsen a candidate for the Vindhya Pradesh Legislative Assembly from Pushaprajgarh and Kotma constituencies, officially set up by the Socialist Party, whose nominations were rejected?

(c) Was not Thakurdin a candidate officially set up by the Socialist Party from Beohari constituency for the Vindhya Pradesh Legislative Assembly?

(d) Was not Bharosa Raj Gond of village Asari, district Shahdol a member of the Socialist Party and your worker in that area?

25. (a) Was not a leaflet entitled Submission to the 'Rajgonds' issued by Sukhsen, Thakurdin and Bharosa above said freely circulated amongst Gond tribe in Shahdol district?

26. (a) Were not Dhanukram and Devdutta Ram of Dhureta and Sanwalia Ram of Sheorajpur Tehsil Mauganj members of the Socialist Party and your workers in that Tehsil?

(b) Did they not issue the pamphlet printed by Kumar Printing Works, Allahabad, and filed with the petition and circulated the same amongst electors".

To these questions the following answers were given on the 13th January, 1953.

"24. (a) No.

(b) No knowledge.

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(c) No personal knowledge.

(d) No.

25. (a) No.

26. (a) No.

(b) No."

The actual recording of evidence commenced on the 13th April, 1953, subsequent to the exchange of these interrogatories and their answers. Since the finding with reference to this allegation is based, as above stated, on the pamphlet which is attached to the petition and on the evidence of witnesses whose names were specifically mentioned in the interrogatories, it is fairly clear that no prejudice would have been caused to the appellant by the non-furnishing of particulars in the very election petition itself. This objection, therefore, has no substance.

10. That Ex. P-3 contains matter of the kind which would come within the scope of S. 123(2) of the Act has not been disputed. But it is urged that the evidence of the four witnesses relied upon is open to serious objections. This evidence is to the following effect.

(1) The pamphlet Ex. P-3 was printed in the press of P. W. 73 with reference to a manuscript given to him by the appellant, Bhagwan Datt Shastri and another person, Joshi, both of whom placed the order with him for printing the pamphlets and that the original typed matter given to him contained the signature of the appellant and that the counter-foil No. 178-A of his bill-book related to the bill relating to this job work in his press.

(2) Pamphlets of which Ex. P-3 was a specimen were distributed by red-capped Socialist Party workers in some villages of the constituency. The correctness of these findings has been seriously challenged. It was strenuously urged that the appellant was not given adequate opportunity to meet and rebut additional evidence taken from P. W. 73 at a later date with reference to an alleged mistake in his previous evidence as regards the date of the counter-foil above mentioned. We have been taken through the evidence relating to this alleged corrupt practice. It is enough to say that we

are satisfied that there is no room for the grievance that adequate opportunity for rebutting the further evidence of P. W. 73 was not given. We are of the opinion that no sufficient reason is available for not accepting the conclusions of the Tribunal. The said conclusions are (1) that the pamphlet, Ex. P-3 was distributed within the constituency by some persons, (2) that this pamphlet was got printed by the appellant himself, inasmuch as it was he that placed the order along with another person, Joshi, with the Proprietor of the printing press, P. W. 73, and (3) that the original of the pamphlet bore the appellant's signature when given to him for appellant's signature when given to him for printing. On the facts so found, the Tribunal was justified in coming to the conclusion they did that the appellant must be taken to have been directly responsible for the distribution of these pamphlets and therefore for the commission of this item of corrupt practice. The further conclusion relating to this item that the distribution of pamphlet, Ex. P-3, was by Socialist Party Workers, who on the evidence in the case were in the position of agents for the appellant has been also seriously challenged both as a fact and in law. On the facts above found, this was not essential so far as this item is concerned and will be noticed with reference to the third item, since the conclusion in this behalf is based on evidence which is virtually common to all the three items.

11. II. Major and minor corrupt practices relating to the distribution of pamphlets like Ex. P-6: This is supported by the evidence of a large number of witnesses, viz., P. Ws. 28, 47, 48, 50, 51, 64, 66, 67, 73 and 75. P. W. 73 who has spoken to Ex. P-3 above noticed, has given exactly the same evidence as regards Ex. P-6 and that evidence has been accepted in toto by the Tribunal. The evidence of the other witnesses above mentioned which has been accepted by the Tribunal makes out distribution of this pamphlet within the constituency by the workers of the Socialist Party. The attack on this finding arrived at by the Tribunal is virtually the same as that which related to the evidence connected with the printing and distribution of Ex. P-3. That the last portion of Ex. P-6 falls within the prohibited category has not been disputed. As regards this item, there is no scope for the complaint that full particulars have not been furnished since the necessary particulars have all been set out in list D mentioned with reference to paragraph 13 of the petition. There is, therefore no room for any further challenge in regard to this item. In passing it may be noticed, that in so far as this is a minor corrupt practice, it does not depend upon any question of the act complained of being done by the candidate directly or by his agent or with their connivance. But it has been held by the Tribunal - and not challenged before us - that the matter in this pamphlet is also such as to fall within proviso (a)(i) and (ii) to S. 123(2) of the Act constituting a major corrupt practice.

12. III. The major corrupt practice relating to conveyance of voters in motor vehicles to a polling station: This has been seriously challenged before us. It falls within the scope of S. 123(6) of the Act, viz., the hiring or procuring of any vehicle for the conveyance of electors to or from any polling station. This item formed the subject of issue No. 6 before the Tribunal. The allegations are contained in paragraph 14 of the petition and the particulars were furnished in list E annexed thereto. The main item of allegation relating to this matter is that, in paragraph 2 of the list, viz., on the 11th January, 1952 (one of the polling dates) a motor truck belonging to Achutanand brought electors from the villages of Amalak and Jurmaniya to Alhua polling station (and that the electors were so brought) by Achutanand of village Dhera (and his co-workers). Evidence was given on behalf of the petitioners in the election petition that the voters were being carried from some of the villages in the constituency to the polling station in motor trucks and that those trucks were of Achutanand who stood as a candidate for the Socialist Party for the local Assembly seat of the same constituency, for which the poll took place simultaneously in the same polling stations. Evidence was also given that these trucks belong to the said candidate Achutanand himself. P. W. 68 stated as follows :

"I saw voters being carried from my tola neighbouring to Jurmaneya to the polling station Alhua in motor trucks. Those trucks were of Shri Achutanand a candidate of Socialist Party who stood for Assembly seats. Bhagwan Datt Shastri was a candidate for Parliamentary seat I saw Shri Achutanand and his workers sitting in that truck. I have seen Achutanand and his workers wearing red caps going in that truck".

P. W. 79 said as follows:

"I saw Shri Achutanand carrying voters to that station in motor truck. He did so 3 or 4 times. There were about 25 to 30 men of public carried in each trip including Shri Achutanand. The men carried in the truck were of villages Jurmaniya, Salwa and Amullakpur. These villages were within a mile from Alhoua. The motor truck used to stop near the polling booth in the school every time."

P. W. 75 said -

"I canvassed for Shri Achutanand who was Socialist candidate for Assembly and for Sri Bhagwan Dutt Shastri who was Socialist candidate for House of People. Shri Achutanand had got two motor trucks". Achutanand himself has been examined as R. W. 21. While he denied carrying or conveying voters in a motor truck to the polling station on the date of the poll, he admitted that his brother Anjani Kumar and another Bhayya who lived in his village had trucks which were in use during the election and attempted to explain that those trucks were possibly hired by the Government to carry ballot boxes. The Tribunal took all this evidence into consideration and came to a definite finding that motor trucks belonging to Achutanand were used on the polling date for the conveyance of electors to the polling booth. On the evidence, this finding cannot be seriously challenged. But what is strongly urged is that the connection of the use of those trucks with the prospects of the candidature of the appellant is not established and that, at any rate, the link of agency between the appellant and Achutanand along with his workers, who according to the evidence were responsible for the carrying of the voters to the polling booths has not at all been established. It is said that some theory of agency has been assumed on an erroneous view as to what constitutes agency for election purposes and it is urged that the assumption is erroneous in law. It is true that Election Courts have generally accepted a somewhat different standard of proof as regards the question of agency in election matters. It is to be noticed that in the Act the word "agent" has been defined in S. 79(a) as follows:

" 'agent' includes an election agent, a polling agent and a counting agent and any person who, on the trial of an election petition or of an offence with respect to any election, is held to have acted as an agent in connection with the election with the knowledge or consent of the candidate."

The questions as to the limits of the doctrine of agency in election matters and the exact scope and effect of the statutory definition of 'agent' may require to be carefully considered by this Court when they become necessary in a proper case. These are important questions bearing on the whole structure of elections run on party lines and have not been adequately dealt with in this case. In the present case the finding arrived at by the Tribunal against the appellant in this behalf is based on clear evidence, which may properly form the basis of a positive finding of agency. It is necessary for this purpose to understand the system of the present elections of which evidence has been given by a number of witnesses. R. W. 14 gives evidence as follows:

"I have been a member of the Socialist Party since 1949. During the election I was General Secretary of the Mauganj Tehsil Socialist Party. At the time of elections I knew that Bhagwan Dutt

Shastri was standing as Socialist candidate. Achutanand was one of the three candidates of the Socialist Party for the Assembly. I was one of those who were in charge of supervision of election campaign on behalf of the Socialist Party. Workers did not canvass for any candidate by name but they canvassed for the party candidates generally. Respondent No. 1 had no worker of his own in his individual capacityOrdinarily all expenses in connection with the election of party candidates were incurred out of the party fund."

Another witness on behalf of the appellant, R. W. 18, said as follows:

"I am acquainted with the workers of the Socialist Party in my constituency. ... They were working for the party candidate as such and not for any one individually. Shastriji was a candidate for the Socialist Party."

Achutanand himself as R. W. 21 stated as follows:

"In my constituency canvassing and propaganda used to be carried on party lines and not for any individual candidates. Respondent No. 1 had no worker or canvasser in my constituency. Respondent No. 1 got majority of votes because of the extensive propaganda carried on for the Socialist Party and its symbol 'banyan tree'".

13. On this evidence it cannot be said that the Election Tribunal was not justified in holding that the carrying of the voters to the polling station in the trucks of Achutanand was with the connivance of the appellant who was a party candidate. That by itself would be enough to bring his case within S. 126(6) of the Act. It is not unreasonable to impute to the candidate the knowledge of the work done by his party in this area and to impute the consequent connivance on his part. This appears from the fact that the return of the election expenses of the appellant at page 78 of the printed record, shows the payment of some amount by the appellant to the Socialist Party for expenses and from the fact that the appellant on the very evidence of his own witnesses had no other independent workers of his own in this area. We are, therefore, satisfied that the finding of the Election Tribunal in this behalf is also well-grounded.

14. It follows that in our opinion there is no reason for interfering with the findings of the Election Tribunal relating to the three alleged corrupt practices set out above. On these findings the result arrived at by the Tribunal that the election of the appellant should be set aside by virtue of S. 100 (2)(b) of the Act must be sustained.

15. In this view it is unnecessary to deal with the findings of the Tribunal relating to the rejection of the nominations of Baboo Lal Udani, Deep Narain and Rajkishore Shukla and to consider the two important questions of law raised therein.

16. In the result the appeals are dismissed with costs. There will be only one set of costs for both the appeals.

Appeals dismissed.

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