

Dr. Y.S. Parmar

Vs

Sh. Hira Singh Paul and Another

Civil Appeal No. 410 of 1958

(T. L. Venkatarama Ayyar, P. B. Gajendragadkar, A. K. Sarkar JJ)

17.10.1958

JUDGMENT

SARKAR, J. -

This appeal arises out of an election petition filed by the respondent No. 1, Hira Singh Paul, whom we shall hereinafter refer to as the respondent. The other respondent to this appeal is the Election Commission, but it has not appeared presumably because it is not interested in the result of the appeal which involves no claim against it. The only question that it involves is whether the appellant was guilty of a corrupt practice, the details of which will be set out later, within the meaning of section 123(7) of the Representation of the People Act, 1951.

In the 1957 General Elections, ten candidates filed their nomination papers to contest the election from the Mahasu double member constituency in Himachal Pradesh. One of the two seats for this constituency was reserved for a scheduled caste candidate. Two of the candidates withdrew from the contest and the remaining eight went to the poll. These eight included the appellant, the respondent and one Nek Ram. Nek Ram was declared elected to the reserved seat that and the appellant to the general seat. The respondent polled the next largest number of votes to the appellant.

After the results had been declared the respondent filed the election petition on August 3, 1957, challenging the validity of the election of the appellant on the ground that he had committed various corrupt practices. The Election Tribunal framed 18 issues in respect of the various corrupt practices alleged in the petition but answered all the issues excepting issues Nos. 8(i), 8(ii) and 11 against the respondent. Issue No. 8(i) raised the question whether one Amar Singh, said to be a member of the armed forces of the Union of India, worked and canvassed for the appellant. Issue No. 8(ii) was whether Amar Singh was appointed his polling agent by the appellant. Issue No. 11 was in the following terms :

In case one or more of Issues Nos. (8) to 10 is or are decided in the affirmative, whether the respondent No. 1 obtained, procured or abetted or attempted to obtain, procure by himself, by his agents and by his supporters the assistance of the Government servants as specified under the said issues for the furtherance of the prospects of his election ?

The Tribunal found against the appellant on Issues Nos. 8(i), 8(ii) and 11 and thereupon declared his election void.

The appellant then went up in appeal to the judicial Commissioner, Himachal Pradesh, who by his judgment dated July 31, 1958, set aside the finding of the Tribunal on Issue No. 8(i) but maintained

its findings on the other two issues and confirmed the declaration that the appellant's election was void. The appellant has come up to this Court by special leave in appeal against this judgment. As will have been seen from what has been earlier stated the only questions that survive are those raised by Issues Nos. 8(ii) and 11.

The facts are not now in dispute and may be stated as follows : The constituency was divided into 606 polling stations and for each polling station three polling agents could be appointed. The appellant was thus entitled to appoint 1818 polling agents. On April 28, 1957, he signed a very large number of the forms prescribed by the rules framed under the Act for appointing polling agents, in blank and without setting out therein the name of any polling agent, as he had not then been able to make up his mind in view of the large number of polling stations as to who would be his polling agents at the various polling stations. He made over these forms to Kalyan Singh, who passed on three of them to Kashmira Singh having inserted therein the words "polling station No. 13, Sheopur". Kashmira Singh filled in the name of Amar Singh as the polling agent in one of these forms on May 25, 1957, the day of polling, and made it over to the latter to enable him to act as the appellant's polling agent at polling station No. 13, Sheopur. Amar Singh then duly signed the form as required by the rules and filed it with the presiding officer at polling station No. 13, Sheopur, and on the strength of it, acted as the polling agent of the appellant at that station for about two hours when objection having been taken to him on the ground that he was a member of the armed forces, he withdrew and left the polling station. Amar Singh was on the polling day in fact a member of the armed forces though this was not then known to the appellant. Kalyan Singh and Kashmira Singh acted in all that they did, under the authority of the appellant. These facts may be taken to have been established on the evidence adduced.

The learned Advocate-General of Uttar Pradesh who appeared for the appellant, first sought to contend that Amar Singh had not really been appointed the appellant's polling agent. He said that under section 46 of the Act a polling agent can be appointed only by the candidate himself or by his election agent and Amar Singh could not on the facts found, for reasons to be stated presently, be said to have been appointed a polling agent either by the appellant or his election agent. Therefore, according to him, Amar Singh had not been appointed the appellant's polling agent at all and hence the charge of corrupt practice against him for having so appointed Amar Singh must fail.

First, it seems to us that this argument is not open to the learned Advocate-General. He himself appeared for the appellant before the learned Judicial Commissioner and there conceded that the factum or the validity of the appointment of Amar Singh as the appellant's polling agent could not be questioned by him. We do not think that we should permit the appellant to withdraw a concession expressly made by his counsel in the Court below in a matter of : this kind. This is all the more so as the present argument does not seem to have been raised when the matter was before the Tribunal, either. Secondly, it seems to us that the contention is without substance. We will assume that the learned Advocate-General is right in his contention that under the Act a polling agent can be appointed only by the candidate himself or by his election agent and not by the candidate acting through any other agent. The learned Advocate-General's contention is that on the facts found, the only possible conclusion is that Amar Singh had not been appointed polling agent by the appellant himself but by one or other of his agents, namely, Kalyan Singh or Kashmira Singh and as none of them was his election agent, the appointment was invalid. It is not in dispute that neither Kalyan Singh nor Kashmira Singh was his election agent. In fact it appears that the appellant had no election agent at all. In our view, however, this does not matter as the present is not the case of an appointment by any agent but by the appellant himself. We have come to this view because here, the appointment was made by the document signed personally by the appellant. The fact that the name

of the polling agent was written in the document by another person after the appellant had signed it, does not make the appointment of the polling agent under that document an appointment by some other person acting as the agent of the appellant. On the language of the document - and the appointment was not purported to have been made in any other way than by the document - it was an appointment made by the appellant himself. The other person only wrote the name in the document which he had authority to do. He did not purport to make any appointment at all. It is impossible to read the document as the making of the appointment by an agent of the appellant acting for him. The true view of the matter plainly is that the appellant himself appointed by the document as his polling agent, a person whose name had been written therein by another with his authority. We, therefore, hold that Amar Singh had been appointed his polling agent by the appellant himself. It was thus even on the learned Advocate-General's construction of section 46, a proper appointment.

We then come to this that the appellant appointed Amar Singh, a member of the armed forces, his polling agent and the latter acted as such. The question is, Did this amount to a corrupt practice by the appellant ? The respondent's contention which has been accepted by the Courts below, is that it is a corrupt practice within section 123(7) of the Act. That provision so far as is relevant and the explanation to it, are in these terms :

Section 123. The following shall be deemed to be corrupt practices for the purposes of this Act :-

#.....##

(7) The obtaining or procuring or abetting or attempting to obtain or procure by a candidate or his agent or, by any other person, any assistance (other than the giving of vote) for the furtherance of the prospects of that candidate's election, from any person in the service of the Government and belonging to any of the following classes, namely :-

#.....##

(c) members of the armed forces of the Union;

Explanation. - (1)..... (2) For the purposes of clause (7), a person shall be deemed to assist in the furtherance of the prospects of a candidate's election if he acts as an election agent, or a polling agent or a counting agent of that candidate.

The learned Advocate-General contends that the procuring or obtaining by a candidate of any assistance for the furtherance of the prospects of his election from a person in the service of the Government as a member of the armed forces, would not amount to a corrupt practice unless that candidate knew that the person was in such Government service. He says that the words 'procuring or obtaining' import such knowledge and that this view of the matter receives great strength from the word 'for' in the phrase "for the furtherance of the prospects of that candidate's election". According to him, without such knowledge the candidate cannot be said to have procured or obtained any assistance, for no one can obtain or procure a thing unless he knows that he is doing so. He then points out that there is evidence that neither the appellant nor Kalyan Singh nor even Kashmira Singh knew that Amar Singh was a member of the armed forces. He, therefore, says that the appellant cannot in the absence of such knowledge be said to have procured or obtained the assistance of a member of the armed forces for furthering the prospects of his election.

It is true that neither the appellant nor Kalyan Singh, nor even Kashmira Singh knew at the date of the appointment of Amar Singh that he was a member of the armed forces but the point now raised by the learned Advocate-General is, in our view, none the less unsustainable. It overlooks the provisions of the second explanation to the section which we have already set out. Under that explanation if a person acts as the polling agent of a candidate it must be held without more, that he assisted in furtherance of the prospects of that candidate's election. In the present case therefore it has to be held that Amar Singh who acted as the appellant's polling agent, thereby assisted in the furtherance of the prospects of his election. Now under the provisions of the Act, no one can act as the polling agent of a candidate unless he has been appointed as such and we have already held that the appellant himself had appointed Amar Singh as his polling agent. It follows in view of the explanation that the appellant procured and obtained the assistance of Amar Singh for the furtherance of the prospects of his election. All the requirements of the section are thus satisfied and the appellant must therefore be held to have committed the corrupt practice thereby constituted. All that the section requires is that assistance shall be procured for furthering the election. Where the explanation applies as it does in the present case, if a candidate has appointed a person to act as his polling agent and he accordingly does so act, a statutory presumption arises that the candidate thereby procured that person's assistance in furtherance of the prospects of his election, and this irrespective of whether he intended to procure such assistance or not. Indeed, as Mr. Achhru Ram appearing for the respondent pointed out, the explanation clearly shows that the candidate's intention is irrelevant, for, such presumption arises even when a candidate has procured another person to act as his counting agent and it is very difficult to imagine that the appointment of a counting agent can further the prospects of any election, for the counting agent acts after the polling is over and only when the votes already polled, are counted. Therefore it seems to us that in the case of the appointment of a polling agent which comes within the explanation as the present case does, the intention of the candidate in procuring the assistance is irrelevant. If that is so, it is clear that the knowledge of the candidate whether the person, whose service as his polling agent he has procured, is a member of the armed forces or any of the other specified class of Government servants or not, is equally irrelevant. We think therefore that the learned Advocate-General's contention must fail.

What we have said just now also disposes of the other argument of the learned Advocate-General, namely, that a corrupt practice is in the nature of a criminal act and cannot therefore be established unless mens rea, or criminal intention, is established, and that the appellant cannot be said to have committed a corrupt practice for he had no mens rea in appointing Amar Singh his polling agent since he did not know that Amar Singh was a member of the armed forces. On this point we were referred to certain passages from English text-books on election law of which it will be enough to refer to one, for all state the law in substantially the same terms. In Schofield's Parliamentary Elections, 2nd Edn. which is one of the text-books to which we were referred, it is stated at p. 402 :

There is an elementary distinction between a corrupt and an illegal practice. To establish the former it is essential to show that a corrupt intention is present. A corrupt practice is a thing the mind goes along with, whereas an illegal practice is a thing the legislature is determined to prevent, whether it is done honestly or dishonestly.

The view thus formulated is founded on the English law of election and is clearly of no assistance to us. It is based on particular English statutes and the language employed therein. We have already shown that our statute in the case at least of a corrupt practice of the kind in hand does not concern itself with any question of intention. Mr. Achhru Ram with his usual industry made available to us the English statutes on which the statement of law set out in the text-books referred to by counsel

for the appellant had been based and pointed out that under these statutes the acts therein made corrupt practices had to be done corruptly and that corrupt practices were always made offences punishable as crimes. It may be of use here to point out that the relevant provisions in our statute were amended in 1956 and that has done away with the distinction between illegal and corrupt practices. In fact, we have now only corrupt practices and no illegal practices. The present case, it may be pointed out, is governed by the amended statute. No question of mens rea or intention or knowledge of the candidate arises in this case.

We, therefore, come to the conclusion that the appellant was guilty of a corrupt practice by appointing Amar Singh, a member of the armed forces, his polling agent whereby the latter was enabled to and did act as such. The appellant's election was consequently in our opinion rightly declared void.

The appeal is therefore dismissed with costs.

Appeal dismissed.

</html