

Shri Balwan Singh

Vs

Shri Lakshmi Narain & Others

Civil Appeal No. 411 of 1959

(Syed Jafar Imam, K. N. Wanchoo, A. K. Sarkar JJ)

23.02.1960

JUDGMENT

SHAH, J. -

Three candidates, Balwan Singh (hereinafter referred to as the appellant), Ram Dulari and Gaya Prasad, contested the election to the U.P. Legislative Assembly from the Akbarpur Rural Assembly Constituency No. 6, at the last general elections held in 1957. The polling of votes took place of February 28, 1957, and the result of the election was declared on March 2, 1957. The appellant secured the highest number of votes and was declared duly elected. A voter named Lakshmi Narain - who will hereinafter be referred to as the first respondent - submitted an application to the Election Commission of India to declare the election of the appellant Balwan Singh void on the ground inter alia that the appellant "and/or his election agent and/or other persons with his consent, had committed corrupt practices and the result of the election was materially affected by such corrupt practices committed in his interest." In Cl. (f) of para 9 of the petition, which is material for this appeal, it was averred by the first respondent, that in villages set out in annexure D, the appellant, his agents and workers with the consent of the appellant, hired and procured bullock carts and tractors for conveying women electors to and from the polling station. In Sch. D, was set out a list of 30 villages. This election petition was referred for trial to the District Judge, Kanpur, who was constituted the Election Tribunal for trying the petition. The appellant by his written statement contended that the averments made in Cl. (f) of para. 9 were untrue; that neither he nor his agents or workers had ever hired or procured bullock carts or trucks to convey women voters from the villages set out in Annexure D or any other village to the polling station. He also submitted that the first respondent had not disclosed the names of the voters nor the particulars of the conveyances, and that the latter could not in view of the defective pleading be permitted to challenge the election of the appellant on that charge. On July 15, 1957, the first respondent applied for leave to amplify the particulars set out in the various clauses of para. 9, including the particulars set out in Cl. (f) and prayed for leave to amplify the recitals in that clause by incorporating Ann. D-1 in the petition. In Ann. D-1, the first respondent set out the nature of the vehicles used, the names of the owners of the vehicles, the names of the villages from which women voters were conveyed at the expense of the appellant to the polling station and back, the hire paid, and the description of the families to which the women voters who were conveyed belonged. The appellant submitted in rejoinder that by his application, the first respondent in substance sought not to amplify the particulars given by him, but to make allegations about fresh corrupt practices, and prayed that several clauses including Cl. (f) of para. 9 be deleted. On July 29, 1957, the Election Tribunal rejected the application of the first respondent. He observed that :

"Merely saying that the corrupt practice was followed in the villages whose list was given in annexure 'D' does not amount to giving particulars as were required to be furnished by the aforesaid Section 83(1)(b) of the Representation of the People Act."

and directed that certain paragraphs including Cl. (f) para. 9 and Annexure D be struck off.

Relying upon a judgment of the Allahabad High Court delivered on September 9, 1957, Mubarak Mazdoor v. K. K. Banerji and another (13 E.L.R. 310) in which, the practice to be followed in dealing with allegations of corrupt practices, made in an election petition, on the ground of vagueness, was enunciated the first respondent applied for review of that order. The Election Tribunal, by its order, dated September 13, 1957, accepted the plea of the first respondent for review of the order, and directed that the order dated July 29, 1957, be set aside.

The appellant applied under Art. 227 of the Constitution, to the High Court of Judicature at Allahabad, challenging the correctness and propriety of the order of the Election Tribunal reviewing its order dated July 29, 1957. By its order dated March 6, 1958, the High Court substantially confirmed the order passed by the Tribunal. The High Court observed that the Tribunal had jurisdiction to review its earlier order, and that in the circumstances of the case it was unnecessary to decide whether the order dated September 13, 1957, was properly passed, because the order dated July 29, 1957, was "unjust and improper", and the matter having been brought before it in a proceeding under Art. 227 of the Constitution, the High Court could rectify the error by setting aside the earlier order. Pursuant to the order passed by the High Court, the averments made in Cl. (f) of para. 9 were restored, and Ann. D-1 was incorporated in the petition.

By its order dated August 16, 1958, the Tribunal dismissed the petition holding that the first respondent failed to establish the corrupt practices on which the petition was founded. Dealing with the corrupt practice set out in Cl. (f) of para. 9, the Tribunal observed that the corrupt practice described in s. 123(5) of the Representation of the People Act, lies in the act of hiring or procuring vehicles by a candidate or his agent, and that this corrupt practice is not committed merely by conveying the voters, and as the particulars of hiring and procuring of the vehicles were not furnished in the petition, and the evidence adduced by the first respondent to support his case of hiring or procuring vehicles was unsatisfactory the case of the first respondent about the commission of a corrupt practice by the appellant stood unsubstantiated.

In an appeal under s. 116A of the Representation of the People Act, against the order of the Election Tribunal the High Court of Judicature at Allahabad set aside the order and declared the election of the appellant void. The High Court held that the petition was defective in that it omitted to set out the date and place of the hiring of the tractor, which was proved to have been used for conveying voters to the polling station, but no prejudice was caused to the appellant as a result of that omission. In the view of the High Court the testimony of A. P. Malik, the Presiding Officer at Naholi polling station, corroborated by exh. 22, a petition submitted on the date of the polling by one Raghuraj Singh, agent of Ram Dulari, a contesting candidate, and further supported by the evidence of witness Kalika Prasad and another witness Raghuraj Singh, established that voters were conveyed in a trailer attached to a tractor, at the instance of the appellant to the Naholi polling station, and that the evidence of one Hanuman Singh established the contract of hiring the tractor used for conveying voters to the polling station. The High Court accordingly held that the appellant had committed the corrupt practice of hiring a vehicle for conveying voters to the polling station. Against the order passed by the High Court declaring the election of the appellant void, this appeal has by special leave been filed.

Section 83(1)(b) of the Representation of the People Act, as amended provides that an election petition shall set forth full particulars of any corrupt practice the petitioner alleges, including as full a statement as possible of the names of parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice. Section 123 sets out what shall be deemed to be corrupt practices for the purposes of the Act, and by Cl. (5) thereof, as it stood at the material date, it was in so far as it is relevant, provided :

"The hiring or procuring, whether on payment or otherwise, of any vehicle or vessel by a candidate or his agent or by any other person for the conveyance of any elector (other than the candidate himself, the members of his family or his agent) to or from any polling station provided under section 25 or a place fixed under sub-section (1) of section 29 for the poll."

Neither in the petition as originally filed nor as amended, the date and place of hiring the tractor which was alleged to have been used for conveying the voters, and the names of the persons between whom the contract of hiring was settled, were set out. The question which then falls to be determined is : Whether the election petition was liable to be rejected because it did not set forth particulars of the date and place of hiring the vehicle alleged to have been used in conveying voters ? In the opinion of the High Court the corrupt practice described in s. 123(5) being the hiring or procuring of a vehicle for conveying voters to the polling station, in the absence of a detailed statement as to the time and place of the hiring, the petition was defective. In so opining, the High Court relied upon an earlier decision of that Court, Madan Lal v. Syed Zargham Haider and others (13 E.L.R. 456). In that case, Bhargava, J., delivering the judgment of the Court, observed :

"....under s. 123(5) of the Representation of the People Act, a corrupt practice consists in the act of hiring or procuring certain types of vehicles by a candidate or his agent or by any other person for the conveyance of any elector to or from any polling station. A corrupt practice is, therefore, committed not by conveying the voter but by the act of hiring or procuring the conveyance. In clause (b) of section 83(1), an election petitioner is required to set forth full particulars of the corrupt practice including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice. The language used in this provision of law requires the setting forth of the full particulars of the corrupt practice and specially mentions at least three particulars which must be given. These are the names of the parties alleged to have committed the corrupt practice, the date when the corrupt practice was committed and the place of the commission of the corrupt practice."

Not the contract of hiring but the fact of hiring for conveying voters to and from the polling station is declared by s. 123(5) a corrupt practice. A petition which sets forth the particulars about the use of a vehicle for conveying voters to and from the polling station, with details as to the time and place coupled with as full a statement as possible in support of the plea that the vehicle was hired or procured by the candidate or his agent or another person substantially complies with the requirement of s. 83(1)(b). In considering whether a corrupt practice described in s. 123(5) is committed, conveying of electors cannot be dissociated from the hiring of a vehicle. The corrupt practice being the hiring or procuring of a vehicle for the conveyance of the electors, if full particulars of conveying by a vehicle of electors to or from any polling station are given, s. 83 is duly complied with, even if the particulars of the contract of hiring, as distinguished from the fact of hiring, are not given. Normally, the arrangement for hiring or procuring a vehicle, is within the special knowledge

of the parties to that agreement and it is difficult to assume that it was intended to require the petitioner in an election dispute to set out the particulars of facts within the special knowledge of the other party, and expose the petition to a penalty of dismissal if those particulars could not be given. If particulars in support of the plea of the vehicle being hired or procured by the candidate or his agent or by another person was used for conveying voters to or from the polling station are set out, failure to set out particulars of the contract of hiring or arrangement of procuring will not render the petition defective.

By The Representation of the People Act, 1951, as amended by Act 27 of 1956, a penalty of dismissal of a petition or the striking out of the plea of a corrupt practice merely because particulars in that behalf are not set out is not imposed. By s. 90, cl. (5) of the Act the Tribunal is authorised to allow particulars of any corrupt practice alleged in the petition, to be amended or amplified in such manner as may, in its opinion, be necessary for ensuring a fair and effective trial of the petition. By s. 90(1) of the Act every election petition is, subject to the provisions of the Act and Rules made thereunder to be tried as nearly as may be in accordance with the procedure applicable under the Civil Procedure Code to the trial of suits : and for failure to furnish particulars after being so ordered but not before the Tribunal may strike out a defective plea. The practice to be followed in cases where insufficient particulars of a corrupt practice are set forth in an election petition is this. An election petition is not liable to be dismissed in limine merely because full particulars of a corrupt practice alleged in the petition, are not set out. Where an objection is raised by the respondent that a petition is defective because full particulars of an alleged corrupt practice are not set out, the Tribunal is bound to decide whether the objection is well-founded. If the Tribunal upholds the objection, it should give an opportunity to the petitioner to apply for leave to amend or amplify the particulars of the corrupt practice alleged; and in the event of non-compliance with that order the Tribunal may strike out the charges which remain vague. Insistence upon full particulars of corrupt practices is undoubtedly of paramount importance in the trial of an election petition, but if the parties go to trial despite the absence of full particulars of the corrupt practice alleged, and evidence of the contesting parties is led on the plea raised by the petition, the petition cannot thereafter be dismissed for want of particulars, because the defect is one of procedure and not one of jurisdiction of the Tribunal to adjudicate upon the plea in the absence of particulars. The appellate court may be justified in setting aside the judgment of the Tribunal if it is satisfied that by reason of the absence of full particulars, material prejudice has resulted; and in considering whether material prejudice has resulted failure to raise and press the objection about the absence of particulars before going to trial must be given due weight.

Assuming that in the case before us, the petition was defective because particulars as to the persons between whom the contract of hiring was entered into, and the date and place thereof, have not been set out, the High Court was right in holding that no material prejudice was occasioned thereby. In the written statement to the petition as originally filed, it was not expressly contended that because of the absence of particulars as to the names of the persons between whom the contract of hiring took place, and the date and place of the contract, the appellant was unable to meet the charges made against him. Even after the petition was amended, no such objection was raised by the appellant. Before the Tribunal, at the hearing of the argument, a plea that the petition was defective, because of lack of particulars relating to the names of the persons who entered into the contract of hiring, and the time and place thereof was apparently raised. But all the evidence relating to the hiring and the time and place thereof, was without objection admitted on the record. It is not even suggested that because of the absence of the particulars, the appellant was embarrassed in making his defence, or that he could not lead evidence relevant to the plea of corrupt practice set up by the first respondent. We are therefore unable to hold that any material prejudice was occasioned because

of the absence of those particulars in the petition.

The order of the Tribunal rejecting the application of the first respondent for amplification of the particulars of the corrupt practice alleged in the election petition was, for reasons already set out, erroneous; and in that view the question whether the High Court misdirected itself in holding itself bound, at the hearing of the appeal, by its earlier judgment delivered on the writ petition, does not fall to be determined.

Counsel for the appellant urged that in any event, the High Court was not justified in disagreeing with the considered judgment of the Tribunal on questions purely of appreciation of evidence. But this appeal has been filed with special leave granted under Art. 136 of the Constitution. It is the settled practice of this Court to grant leave to appeal under Art. 136 only if exceptional and special circumstances exist, or that substantial and grave injustice has been done and the case presents features of sufficient gravity to warrant a review of the decision appealed against. Merely because the appeal has been admitted by special leave, the entire case is not at large, and the appellant is not free to contest the findings of fact of the subordinate tribunals. Only those points on which special leave may initially be granted, can be urged at the final hearing; and normally, special leave will not be granted by this Court under Art. 136(1) of the Constitution on a plea of error committed by the Courts below in the appreciation of evidence.

This would be sufficient to justify us in refusing to entertain the argument advanced by the counsel for the appellant. We may, however, observe that even on a review of the evidence, we are satisfied that the High Court was right in its conclusion. There was before the Tribunal the evidence of Mr. A. P. Malik, the Presiding Officer at the Naholi polling station, who testified that he had seen on the day of polling a tractor at a distance of 100 to 150 yards from the polling booth. The witness stated that he did not remember having seen any flag or poster on the tractor. The witness, however, had made a note in his diary about an application submitted to him by Raghuraj Singh. P.W. 30. A copy of that application has been produced, and it is recited in that application that a tractor had come to the polling booth and was parked near "the line of voters"; that some persons, a majority of whom were women, were sitting on the tractor; that a red flag was hoisted and posters of the socialist party were pasted on the tractor; and that some men and women, who came on the tractor, were placed in the queue of voters. There was also the evidence of Raghuraj Singh, P.W. 38, a voter in the constituency. He stated that he had seen the tractor belonging to Chandra Bahadur Pandey of village Chapargatha, near the polling station; that a red flag was hoisted and posters were pasted over the tractor with the symbol of a banyan tree which was the emblem of the party of the appellant. He further stated that one Kalika Prasad and some female members of his family had come on the trailer and Radhey Shyam, an agent of the appellant, had taken all these voters and had given them slips of paper. Kalika Prasad was also examined and he stated that he and his wife and several other villagers had gone to the Naholi polling station to exercise their franchise on the trailer attached to the tractor; that a red flag was hoisted and posters were pasted on the trailer; and that there was on the posters the legend that votes be cast in favour of the appellant. It is established by unimpeachable evidence that a tractor was brought to Naholi Polling Station on the date of the polling. The Tribunal accepted the evidence of Mr. Malik, but rejected the testimony of other witnesses on somewhat fanciful theories. The Tribunal observed that at the material time no tractor was brought near the polling booth, and if one was brought, the owner of the tractor may possibly have given a free lift to the voters to the polling station and back. The Tribunal also suggested that the tractor may have been brought without the consent of the appellant or his agents. But the fact that a tractor was brought to the polling station, is clearly established by the evidence of Mr. Malik. That on the tractor was carried a red flag of the party of the appellant, is established by the evidence

of the two witnesses, Raghuraj Singh, P.W. 30 and Raghuraj Singh P.W. 38, and also by the evidence of Kalika Prasad. It is also established on the evidence that on the tractor, were displayed posters bearing the symbol of a banyan tree, which was the election emblem of the party of the appellant at the election. There was no sufficient reason for discarding this testimony. Witness Hanuman Singh P.W. 56 deposed that he was present at the time of the settlement of the bargain of hiring the tractor belonging to Chandra Bahadur for conveying voters. The High Court accepted that evidence and we do not think, judged in the context of the other evidence that the High Court was in error in so doing.

The appeal, therefore, fails and is dismissed with costs.

SARKAR, J. ♦

I agree that this appeal fails.

The appellant had been declared elected at an election. The first respondent filed an election petition under the Representation of the People Act, 1951 to have the appellant's election declared void. Among other things it was said that the appellant had committed a corrupt practice which was described in the petition substantially in these words : In villages mentioned in annexure D the appellant hired a tractor for conveying women electors from their houses to places of polling and back.

The appellant applied to have this allegation struck out as it did not contain sufficient particulars of the corrupt practice alleged. The respondent in his turn sought permission to give particulars of this corrupt practice by amending his petition by the substitution of a new annexure to his petition marked D1 in the place of the existing annexure D. The Election Tribunal first made an order refusing the amendment and striking out the allegation as desired by the appellant. Later it made another order reviewing its earlier order and thereby cancelled that order. By this order it directed the restoration of the allegation struck out and the substitution of annexure D by annexure D1.

The appellant moved the High Court at Allahabad under arts. 226 and 227 of the Constitution against the latter order of the Tribunal. The High Court held that the Tribunal had the power to review any order made by it and that the order made on review allowing the amendment was correct. It also held that if the Tribunal had no power of review, the High Court being itself seized of the matter, would be deemed to have set aside the first order of the Tribunal and made an order allowing the amendment. The appellant did not appeal from this order of the High Court.

The parties then went to trial before the Tribunal. The appellant led his evidence without any objection as to the petition being defective for want of any particulars. The Tribunal took the view that the corrupt practice alleged had not been proved and dismissed the petition. On appeal the High Court held that the corrupt practice had been proved and set aside the election of the appellant. Hence this appeal.

It is said that the election petition should have been dismissed because sufficient particulars of the corrupt practice alleged had not been given in the petition. The corrupt practice alleged is of the kind mentioned in s. 123(5) of the Act which is in these words :

The hiring or procuring, whether on payment or otherwise, of any vehicle or vessel by a candidate.....for the conveyance of any elector.....to or from any polling station.

It is contended that the hiring of the vehicle is an essential element of the corrupt practice mentioned in this section. I am leaving out of consideration the procuring of a vehicle because that is not the case here. It is said that the petition must, therefore, state the particulars of the date and place of the contract of hiring and the parties to it. Reference is made to s. 83 of the Act where it is provided that, "An election petition.....shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such corrupt practice." The question thus arises whether the particulars of the parties to the contract of hiring and the date when, and the place where, it had been made should have been given.

The respondent does not deny that the particulars of the contract of hiring had not been stated in the petition. According to him the corrupt practice mentioned in s. 123(5) is not committed by the contract of hiring but by the conveyance of the electors in a hired vehicle. Hence, he says that no question as to these particulars arises.

In my view the appellant's contention is well-founded. Under the section the hiring of the vehicle for the conveyance of electors is the corrupt practice. It is of the essence of this corrupt practice that the vehicle must have been hired, that is to say, a contract for the hiring of the vehicle must have been made. I am unable to imagine how a vehicle can be hired without a contract. Therefore it seems to me that particulars of that contract should be given.

I am also unable to appreciate the respondent's contention. It seems to me that to say that the corrupt practice is committed by the conveyance of electors in a hired vehicle is the same thing as saying that electors had been conveyed by a vehicle which had been hired, that is, a vehicle in respect of which a contract of hiring has been made. Simple conveyance of electors in a vehicle is not enough. The vehicle must be a hired vehicle. Hence there is no corrupt practice unless the hiring of the vehicle, that is, the contract of hire in respect of it is established.

Whether a simple contract of the hiring of a vehicle for the conveyance of electors without actual conveyance of them would amount to a corrupt practice or not, is a question that does not arise in this case. But it seems to me that whatever view is taken of that question, that would not make the contract of hiring any the less an essential element of the corrupt practice described in s. 123(5).

In my view therefore the appellant was entitled to the particulars the want of which he now complains. The question then is what is the effect of the failure to supply these particulars ? I am unable to agree that the petition was thereupon liable to be dismissed. It has not been shown to us that the Act provides for such dismissal. Section 83 does not say that on failure to furnish the prescribed particulars the petition shall be dismissed. On the other hand, s. 90(3) of the Act provides that, "The Tribunal shall dismiss an election petition which does not comply with the provisions of section 81, section 82 or section 117." This section does not include s. 83. It therefore seems to me that the appellant was not entitled to a dismissal of the petition for want of the particulars.

The appellant was certainly entitled to apply for the particulars. I conceive he would have such a right under s. 83 and also s. 90(1) of the Act which made the provisions of the Code of Civil Procedure applicable to a trial before an Election Tribunal, in the view that I have taken, that the contract of hiring is an essential element of the corrupt practice mentioned in s. 123(5) of the Act. The appellant however made no such application. Instead he went to trial and led evidence without making any grievance that he was hampered in his defence for want of the particulars. He cannot at a later stage complain about the absence of the particulars. It is unnecessary to consider what would

have happened if upon the appellant's application the respondent had been directed to furnish the particulars and had failed to do so, for no such order had been made.

It only remains for me to say that it is not open for the appellant to contend now that the Tribunal was wrong in reviewing its order. The High Court rejected that contention in the order made on the application under arts. 226 and 227 of the Constitution. For greater safety it also made an order allowing the amendment sought by the respondent. The High Court's decision not having been questioned by the appellant by an appeal, is binding on him. He must therefore accept the position that the amendment of the petition was proper. I may also state that if the amendment had not been properly allowed that would not have made any difference. The only result would have been that some more particulars of the corrupt practice alleged would have been wanting. For the reasons earlier stated this would not have entailed a dismissal of the election petition.

The only other point that was argued at the bar was a question of fact, namely, whether the corrupt practice alleged had been proved. On that point I am in perfect agreement with the view expressed by my learned brothers and have nothing to add.

Appeal dismissed.

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