

Inder Lal

Vs

Lal Singh

Civil Appeal No. 280 of 1961

(P. B. Gajendragadkar, A. K. Sarkar, K. N. Wanchoo JJ)

08.02.1962

JUDGMENT

GAJENDRAGADKAR, J. -

This appeal by special leave arises out of an election petition filed by the appellant challenging the validity of the election of respondent No. 1, Lal Singh on several grounds. The appellant is an elector in the Chittorgarh Constituency and the election which led to the present petition was held in March, 1957, for the Rajasthan Legislative Assembly from the said constituency. As a result of the election, respondent No. 1 was declared to have duly elected on the 11th March, 1957. He secured 7272 votes whereas respondent No. 2 Laxman Singh s/o Maharawal Sir Bijey Singh secured 7261 votes and respondent No. 3 Chhogalal secured 569 votes. The appellant's case was that respondent No. 1's election was invalid inasmuch as he had practiced corrupt practices at the said election. According to the appellant, respondent No. 1 procured or abetted or attempted to procure either by himself or by his agents or by other persons with his connivance or that of his agents the reception of invalid votes and as a result of the said votes, the result of the Election had been materially affected. The appellant stated in detail the manner in which the said invalid votes had been procured. The appellant further pleaded that respondent No. 1, his agents and other persons with the connivance of respondent No. 1 or that of his agents published such statements of facts (Exts. 3 & 6) which were false and which they either believed to be false or did not believe to be true, in relation to the personal character or conduct of respondent No. 2 which were likely to prejudice the prospect of respondent No. 2 at the election. It is on these two grounds that the appellant claimed a declaration that the election of respondent No. 1 was invalid. He also claimed that respondent No. 2 should be declared to have been validly elected.

Respondent No. 2 filed his written statement supporting the petition but he did not appear before the Tribunal at the hearing. Respondent No. 3 did not appear at all, while respondent No. 1 denied all the allegations made by the appellant and contended that the election petition filed by the appellant should be dismissed.

On the pleadings of the parties, the Election Tribunal framed as many as 26 issues. In substance it held that the several allegations made by the appellant in respect of the receipt of invalid votes had not been proved and so the first ground on which respondent No. 1's election was challenged by appellant, could not succeed. In regard to the second ground on which respondent No. 1's election was challenged by the appellant, the Tribunal held that Ext. 3 had been published by the agent of respondent No. 1 but not with his express consent and in regard to Ext. 6, the Tribunal was not satisfied that it had been published by respondent No. 1's agent. That is how even the second ground made by the appellant disputing the validity of respondent No. 1's election did not succeed. In the

result, the election petition was dismissed.

Against the said decision, the appellant preferred an appeal in the Rajasthan High Court. The High Court confirmed the finding of the Tribunal on the first point in regard to the receipt of invalid votes. It is true that the High Court was not satisfied with the approach adopted by the Tribunal in dealing with this part of the case and it thought that some of the reasons given by the Tribunal in support of its conclusions were not satisfactory. Even so, the High Court felt that the final conclusion of the Tribunal was, on the whole, correct and need not be reversed. Thus both the Tribunal and the High Court have recorded findings against the appellant on the first part of his case.

In regard to the second contention raised by the appellant, the High Court has accepted the finding of the Tribunal about the publication of Ext. 3. In regard to the other document Ext. 6, the High Court has reversed the conclusion of the Tribunal and held that the said document had been published for the benefit of respondent No. 1 and differing from the view taken by the Tribunal, the High Court has held that the publication of both the pamphlets was with consent of respondent No. 1 and so was outside the preview of s. 100(2) of the Representation of the People Act 1951 (43 of 1951) (hereinafter called the Act). Having thus found that the two pamphlets had been published by the agent of respondent No. 1 and with his consent, the High Court proceeded to examine the question as to whether the material allegations made against respondent No. 2 by the said pamphlets were true or false. The High Court held that the said material allegations were false and it came to the conclusion that they were calculated to effect prejudicially the prospects of the election of respondent No. 2. The High Court was, however, not satisfied that the said allegations had relation to the personal character or conduct of respondent No. 2 and so it held that the corrupt practice alleged by the appellant against respondent No. 2 on the strength of the said two pamphlets under s. 123(4) of the act had not been proved. The result was that though the High Court differed from the Election Tribunal in regard to some of the findings recorded by the Tribunal on the second ground, its ultimate conclusion was the same as that of the Tribunal. The appeal preferred by the appellant was accordingly dismissed. It is against this order that the appellant has come to this Court by Special leave.

In this appeal, the only question which we are called upon to consider is whether the two pamphlets justify the contention of the appellant that respondent No. 1 has committed a corrupt practice under s. 153(4). The question as to whether respondent No. 1's election has been materially assisted by the receipt of invalid votes, is concluded by concurrent finding of fact recorded against the appellant and so we have not allowed Mr. Sastri to dispute the correctness of that finding.

Before dealing with the short point raised for our decision under s. 123(4) of the Act, it is necessary to set out the material portion of the pamphlets on which the appellant's case of corrupt practice is based. The relevant portion in the pamphlet Ext. 3 to which objection is taken by the appellant reads thus :-

"(1) Enemy of Democracy ?

(2) Agent of the foreigners strangling the freedom of Bharat ?

(3) Supporter and collaborator of the conspiracy of Pakistani attack on Bharat ?

(4) Bringer of tyrannical rule of Rajas in Rajasthan ?

(5) Destroyer of Hindu Muslim unity by raising the slogan of Ram Rajya ?

(6) Purchaser of the opponents of the Congress by means of Money ?

"Maharawal of Dungarpur, Shri Laxman Singh, who was defeated in the last election by thousands of votes, has come to mislead the people of Chittor, has come to push back the backward district of Chittor by 100 years, has come to destroy the peace and tranquillity of Chittor under cover of communal organisation, has come to provide means to the public to spend their hard earned money on drinking orgies, has come to intensify again the tyranny of Raja Maharajas in Rajasthan, has come to make a gift of Kashmir to the aggressor Pakistan, has come to enslave India again by collaborating with Pakistan and Pakistan's friends. He is a friend of Raja Maharajas and an enemy of cultivators and labourers. He wants to grant land to Bhooswamis and thereby oust the cultivators and wants to establish once more his pagent by exploitation of the hard labour of cultivators."

The other pamphlet contains substantially the same portion and so it need not be reproduced.

It is urged for the appellant that in describing respondent No. 2 as the agent of foreigners strangling the freedom of Bharat, the personal character of respondent No. 2 has been falsely and adversely criticised. The same comment is made in respect of the description of respondent No. 2 as the supporter and collaborator of the conspiracy of Pakistani attack on Bharat and in support of this argument, reliance has been placed on the further statement in the pamphlet that respondent No. 2 had come to make a gift of Kashmir to the aggressor Pakistan and had come to enslave India by collaborating with Pakistan and Pakistan's friends. It is also argued that describing respondent No. 2 as the purchaser of the opponents of the Congress by means of money, attracts the provisions of 123(4). It is mainly on these three allegations in the pamphlet that the case of the appellant rests and the argument is that by making these allegations, the private character of respondent No. 2 has been falsely vilified and that the said vilification was reasonably calculated to prejudice the prospects of his election.

On the other hand, for respondent No. 1 Mr. Mathur who appeared amicus curiae at our request has contended that all the three allegations, though false, cannot be said to touch or effect the private character of respondent No. 2. He has argued that in dealing with s. 123(4), it is necessary to make a distinction between the personal or private character or conduct of a candidate and his public or political character. Mr. Mathur's contention is that though the criticism made against respondent No. 2 by the impugned pamphlet may be extravagant, unreasonable and false, it is nevertheless criticism made against him in his public and political character and as such, s. 123(4) cannot be invoked.

It is, therefore, necessary to determine the true scope and effect of the relevant provision in s. 123(4). Section 123 deals with corrupt practices and amongst them, is the corrupt practice specified by sub-section (4). That sub-section reads thus :-

"The publication by a candidate or his agent or by any other person, of any statement of fact which is false, and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate, or in relation to the candidature, or withdrawal, or retirement from contest, of any candidate, being a statement reasonably calculated to prejudice the prospects of that candidate's election."

It would thus be seen that the publication in question must be by a candidate or his agent or by any other person; the said publication should be in regard to a statement of fact which is false and which he either believes to be false or does not believe to be true; that it must have relation to the personal character or conduct of the candidate, or should have relation to the candidature, withdrawal or retirement from contest of any candidate and that it should be a statement reasonably calculated to prejudice the prospects of that candidate's election. All the requirements of this sub-section, except one, are held to have been satisfied according by the High Court. The only requirement of the sub-section which has not been satisfied according to the High Court is that the statement has no relation to the personal character or conduct of respondent No. 2. Mr. Sastri contends that this finding of the High Court is erroneous in law.

It would be noticed that in prescribing the requirement that the false statement should have relation to the personal character of the candidate, a distinction is intended to be drawn between the personal character of the candidate and his public or political character. The provision postulates that if a false statement is made in regard to the public or political character of the candidate, it would not constitute a corrupt practice even if it is likely to prejudice the prospects of that candidate's election. This assumption is presumably based on the theory that the electorate being politically educated and mature, would not be deceived by a false criticism against the public or political character of any candidate. The public and political character of a candidate is open to public view and public criticism and even if any false statements are made about the political views of a candidate or his public conduct or character, the electorate would be able to judge the allegations on the merits and may not be misled by any false allegations in that behalf. It is on this theory that false statements of fact effecting the public or political character of a candidate are not brought within the mischief of ss. 123(4). In order that the elections should be free, it is necessary that the electorate should be educated on political issues in a fearless manner and so, the Legislature thought that full and ample scope should be left for free and fearless criticism by candidates against the public and political character of their opponents.

But the position with regard to the private or personal character of the candidate is very different. Circulation of false statements about the private or personal character of the candidate during the period preceding elections is likely to work against the freedom of election itself inasmuch as the effect created by false statements cannot be met by denials in proper time and so the Constituency has to be protected against the circulation of such false statements which are likely to effect the voting of the electors. That is why it is for the protection of the constituency against acts which would be fatal to the freedom of election that the statute provides for the inclusion of the circulation of false statements concerning the private character of a candidate amongst corrupt practices. Dissemination of false statements about the personal character of a candidate thus constitutes a corrupt practice.

Though it is clear that the statute wants to make a broad distinction between public and political character on the one hand and private character on the other, it is obvious that a sharp and clear-cut dividing line cannot be drawn to distinguish the one from the other. In discussing the distinction between the private character and the public character, sometimes reference is made to the "man beneath the politician" and it is said that if a statement of fact affects the man beneath the politician it touches private character and if it affects the politician. It does not touch his private character. There may be some false statements of fact which clearly affect the private character of the candidate; if, for instance, it is said that the candidate is a cheat or murderer there can be no doubt that the statement is in regard to his private character and conduct and so if the statement is shown to be false, it would undoubtedly be a corrupt practice. Similarly, if the economic policy of the party

to which the candidate belongs or its political ideology is falsely criticised and in strong words it is suggested that the said policy and ideology would cause the ruin of the country, that clearly would be criticism, though false, against the public character of the candidate and his political party and as such, it would be outside the purview of the statute. But there may be cases on the border-line where the false statement may affect both the politician and the man beneath the politician and it is precisely in dealing with cases on the border-line that difficulties are experienced in determining whether the impugned false statement constitutes a corrupt practice or not. If, for instance, it is said that in his public life, the candidate has utilised his position for the selfish purpose of securing jobs for his relations, it may be argued that it is criticism against the candidate in his public character and it may also be suggested that it nevertheless affects his private character. Therefore, it is clear that in dealing with corrupt practices alleged under s. 123(4) where we are concerned with border-line cases, we will have to draw a working line to distinguish private character from public character and it may also have to be borne in mind that in some cases, the false statement may affect both the private and the public character as well.

In the present case, we are satisfied that the allegation made in the pamphlet that respondent No. 2 is a purchaser of the opponents of the Congress by means of money clearly attracts the provisions of ss. 123(4). In plain terms, the statement amounts to an allegation that respondent No. 2 buys by offering bribes the votes of the opponents of the Congress. Bribery is itself a corrupt practice and if it is said against a candidate that he practices the corrupt practice of buying the votes of the opponents of the Congress by means of bribery, that clearly and unequivocally affects his private character. Offering a bribe in an election introduces an element of moral turpitude and it cannot be denied that a person who offers bribe loses reputation as an individual in the eyes of the public. The statement alleges that the bribes are offered by respondent No. 2 for the purpose of election and in that sense it may be that it is his public character which is falsely criticised. But, in our opinion, it would be idle to contend that it is a false statement only against the public character of respondent No. 2. Having regard to the moral turpitude involved in the offering of the bribe, the statement in question undoubtedly affects his private character as well. Unfortunately, in dealing with this point, the High Court does not appear to have considered this statement at all. It has dealt with this problem in very general terms. It has observed that the impugned statements all refer to the Maharawal as one of those various persons of his class who as a body appear to be responsible in the opinion of the writer for the political mischiefs referred to in the statements, and that a general reading of the document shows that the attack upon him is a part of a bigger organisation to individuals who do not appear to be as the writer thinks, well inclined towards the progress of the country. It is perfectly true that in dealing with the contention that the false statement contained in the pamphlet amounts to a corrupt practice under ss. 123(4), it is necessary to read the document as a whole before determining the effect of any particular objectionable statement. But reading the document as a whole, we see no justification whatever for the view expressed by the High Court that the criticism made in the document is directed against a body of persons and not against respondent No. 2 himself. The failure of the High Court to deal with the several specific statements on which the argument of the appellant is based, has introduced a serious infirmity in its final conclusion. If only the High Court had considered whether the allegation that respondent No. 2 was the purchaser of opponents of the Congress by means of money, we are inclined to think that the High Court would not have brushed aside the appellant's case with the general observations which it has made in its judgment. We are, therefore, satisfied that the appellant is right in contending that the false statement of fact to which we have just referred constitutes a corrupt practice under ss. 123(4) of the Act. In that view of the matter, it is unnecessary to consider whether the other impugned statements of fact also attract the provisions of ss. 123(4).

In the result, we must reverse the finding of the High Court that publication of the impugned pamphlets does not constitute a corrupt practice under ss. 123(4). The result of this conclusion inevitably is that the election of respondent No. 1 must be declared to be invalid because there is no doubt that the corrupt practice proved in this case falls under section 10(b) and is outside the purview of section 100(2).

That takes to us the question as to whether respondent No. 2 can be declared to have been validly elected at the election in question. This question will have to be decided in the light of provisions of section 101(b) of the Act. The said section provides, inter alia, that "if any person who has lodged a petition has, in addition to calling in question the election of the returned candidate, claimed a declaration that any other candidate has been duly elected and the Tribunal is of opinion that but for the votes obtained by such returned candidate by corrupt practices such other candidate would have obtained a majority of the valid votes, the Tribunal shall after declaring the election of the returned candidate to be void declare such other candidate to have been duly elected". This question has not been considered by the High Court and it cannot be decided unless the relevant facts are examined on the merits and that normally would mean our remanding the cases to the High Court for the decision of the point in accordance with law. We do not, however, propose to adopt such a course in view of the fact that it would be futile to give any further lease of life to this petition. The election which is challenged took place in 1957 and in fact we are now on the verge of fresh elections which would take place this month. That is why we think it would serve no purpose in sending the matter back for the decision of the question as to whether on the evidence adduced in the case, respondent No. 2 can be declared to have been validly elected.

The result is, the appeal is allowed and the election of respondent No. 1 is set aside. Since respondent No. 1 did not appear, there would be no order as to costs.

Appeal allowed.

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