

Ramanbhai Ashabhai Patel

Vs

Dabhi Ajitkumar Fulsinji and Others

Civil Appeal No. 506 of 1964

(Mudholkar JJ)

09.10.1964

JUDGMENT

MUDHOLKAR J.

The main question which arises for decision in this appeal from the judgment of the Gujarat High Court is whether the appellant could be said to be guilty of a corrupt practice contemplated by sub-s. (3) of s. 123 of the Representation of the People Act, 1951 (hereinafter referred to as the Act) by reason of the fact that his election symbol, a star, was described as 'Dhruva star' in the pamphlets published and distributed by him or by his agents and in which the qualities of Dhruva star were also set out.

The election to the Assembly seat was contested by three candidates, the appellant, respondent No. 1 and respondent No. 2. The appellant having secured 20,062 votes as against 15,190 secured by the first respondent and 7,093 by the second respondent, was declared to be elected on February 26, 1962. The first respondent thereupon preferred an election petition before the Election Commission challenging the appellant's election on the following five grounds :

- (1) That the second respondent had not completed 25 years of age on the date of the scrutiny of the nomination papers, that the acceptance of his nomination paper was improper and that the result of the election was materially affected thereby inasmuch as all the votes secured by him, would, if he had not been a candidate, have been secured by the first respondent;
- (2) that the appellant was guilty of corrupt practices because he and his agents had bribed the voters and had also brought undue influence to bear upon them;
- (3) that the appellant and his agents procured bus No. GTA 7673 for taking the voters from village Sodpur to and from the polling booths;
- (4) that the appellant and his agents has issued and widely distributed leaflets with 'star' as a symbol prefixed by the word "Dhruva" with a view a view to give religious impetus and to appeal to the voters to vote for him in the name of religion;
- (5) that certain notifications issued by the Governor of the State of Gujarat and the Election Commission had not been issued in due compliance with the provisions of law.

The Tribunal rejected all the allegations relating to corrupt practices made against the appellant and also held that the distribution of leaflets did not amount to a corrupt practice. The Tribunal similarly rejected the contention of the first respondent as to the validity of the notifications issued by the Governor and the Election Commission. It, however, held that the second respondent's nomination paper had been improperly accepted because he had not attained the age of 25 at the date of scrutiny and that in consequence thereof the result of the election was materially affected. Upon this ground it set aside the appellant's election.

In appeal the High Court reversed the finding of the Tribunal regarding the age of the second respondent and held that he having completed the age of 25 on January 6, 1962 which was prior to the date of scrutiny was duly qualified to contest the election. It, however, affirmed the ultimate decision of the Tribunal on the ground that the appellant and the Swatantra Party to which he belonged had been guilty of a corrupt practice, namely, of appealing to the electorate on grounds of religion and of using a religious symbol for the furtherance of his prospects in the election. The judgment of the Court was delivered by K. T. Desai C.J. in the course of which he has stated (at p. 245 of the paper book) :

"There are several other points on which the election of the Swatantra Party candidate had been challenged before the Election Tribunal. Mr. Daru, the learned advocate for the first respondent before us, has been content with arguing the case of the first respondent before us on the basis of a corrupt practice being committed by the Swatantra Party with the consent of the Swatantra Party candidate. He has not pressed the other points or other arguments into service. The matter is an election matter and if we had found it necessary we would have gone into other matters, but it is not necessary for us to do in view of our decision that the election is liable to be declared void by reason of the corrupt practice that has been committed at the election with the consent of the appellant before us."

This is rather a curious observation to make in view of the fact that on all the other points the Tribunal had itself found against respondent No. 1 and respondent No. 1 was content to stake his case only on one point, and that is, the one which ultimately found favour with the High Court. It is true that an election dispute is to a certain extent different from a private dispute between the parties to a lis because the constituency also comes into the picture and, therefore, it is the duty of the Election Tribunal to safeguard its interests and if corrupt practices are alleged against any candidate to enquire into them and ascertain whether the allegations have been substantiated. Here, the Tribunal's findings were that the other corrupt practices had not been established. Since Mr. Daru who appeared for respondent No. 1 did not even seek to challenge those findings there was no further duty upon the High Court to examine their correctness. Similarly, the contention of respondent No. 1 to the effect that certain notifications were invalid was also negatived by the Tribunal and Mr. Daru did not want to challenge its decision. The question whether a particular notification is valid or invalid has no bearing upon the question of purity of elections and, therefore, if a party who raises a contention of this kind does not propose to proceed with it, the matter is at an end and neither the Tribunal nor the High Court is bound to enquire into it. In this appeal, therefore, we will confine ourselves only to two points - the first whether the view of the High Court regarding the effect of the use of the Dhruva star by the appellant is correct and the other whether the nomination of the second respondent as a candidate was improperly accepted.

Section 123 of the Act sets out what shall be deemed to be corrupt practices for the purposes of the Act.

Sub-section (3) thereof provides as follows :

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

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(3) The appeal by a candidate or his agent or by any other person with the consent of a candidate or his election agent to vote or refrain from voting for any person on the ground of his religion, race, caste, community or language or the use of, or appeal to, religious symbols, or the use of, or appeal to, national symbols, such as the national flag or the national emblem, for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate."

This provision thus deals with two matters : an appeal on the ground of religion, caste, etc., and the use of or an appeal to religious symbols, national symbols etc. Resort to these practices in an election is prohibited by it. The allegation here is that the appellant and his agents have contravened the provision by the use of or appeal to a religious symbol. The question is whether the Dhruva star is a 'religious symbol. As pointed out by this Court in *Jagdev Singh Sidhanti v. Pratap Singh Daulta & Ors* (A.J.R. 1965 S.C. 183). the question had to be examined in two branches : whether the symbol used has any special religious significance and whether its inscription on leaflets and pamphlets which were distributed amounts to the use of a religious symbol.

If the Dhruva star has no religious significance, its use in the manner made will not convert that use into a use of a religious symbol. The High Court has held that it is a symbol of the Hindu religion. If we find that no particular object or creature could be regarded as a religious as a religious symbol among Hindus, its use in an election will not be within the prohibition enacted in s. 123(3) of the Act. For, it must be borne in mind that the object underlying the prohibition is stirring up religious sentiment by use of or appeal to a religious symbol. If what is done does not tend to arouse religious sentiment, s. 123(3) would not be transgressed.

It is not disputed that the Election Commission has allotted 'star' as a symbol to the Swatantra Party which had put forward the appellant as its candidate. Nor is it disputed that in some of the leaflets and pamphlets distributed by or on behalf of the appellant the election symbol of the Swatantra Party is described as the star Dhruva or the Pole star. It is also not disputed that on some pamphlets the following characteristics associated with the star Dhruva are set out :

Dhruva means eternal. Dhruva means firm. Dhruva means guide. Dhruva means determined. Dhruva means one devoted to religion."

In Exhibit 63 which is the translation of Election manifesto of the appellant it is further said : "for free religion, free agriculture and free commerce, vote for none else but the 'Dhruvano Taro' that is Swatantra Party, at the coming elections." Not a single pamphlet or leaflet is alleged to have been distributed by or at the instance of the appellant in which a direct appeal is made to the religious sentiments of the voters. The short question, therefore, is whether by describing the election symbol as Dhruva star and by specifying its attributes, the provisions of sub-s. (3) of s. 123 could be said to have been violated.

Let us first consider whether the mythological figure Dhruva has any significance in the religious beliefs or practices of Hindus. The High Court seems to have delved deep into the Vishnu Purana, the Mahabharata and the Bhagwat for digging up the story of Dhruva and ascertaining and

describing his qualities and particularly of his steadfast devotion to the creator. All that seems to us to have been wholly unnecessary because it leads us nowhere. Briefly, the story of Dhruva is that as a result of his steadfast devotion and complete surrender to God, Dhruva earned a boon and that was being accorded a unique place in the firmament where in relation to the rest of the stellar bodies his position is fixed. According to the Puranas he was promised this position till the destruction of the universe. This itself shows that he was not raised to the status of divinity, that is to say, he did not join the company of the 33 crore deities which are said to comprise the Hindu Pantheon. How then can the association of Dhruva with the star be regarded as an appeal to Hindu religious sentiments? The five qualities which are generally associated with Dhruva are, indeed, noble qualities but they have no significance peculiar to Hindu religion. The significance of these qualities to the Hindus would be in no way different from that to persons professing other religions or systems of beliefs. We do not think there was any justification for the High Court to read more into the symbol used by the appellant than what it apparently contains.

It is true that during the wedding ceremony of a Hindu the attention of the bride and the bridegroom is drawn to the Dhruva star and they are exhorted to be steadfast in their loyalty to each other as Dhruva was in his devotion to Vishnu. In a few other ceremonies also the example of Dhruva is cited or a reference to his qualities made. But since Dhruva is not regarded as a deity or a Godhead a reference to him cannot be said to have religious significance even to an orthodox or an illiterate and religiously minded Hindu. It is said that the word "Dharma priya", a quality of Dhruva mentioned in the leaflet and pamphlets, gives religious significance to the Dhruva star. The word 'Dharma' can mean religion. But it can also mean 'duty. According to the High Court it must be taken to mean 'one devoted to religion' and for arriving at this conclusion it has, as already stated, referred to the Vishnu Purana, the Bhagwat and the Mahabharata. It has also referred to the evidence of a witness who says that the Dhruva star is worshipped at the time of marriage and at the time of entry into a new house. But all this only shows that Dhruva was regarded as a great devotee of Vishnu and held in reverence by Hindus. It clearly negatives the idea of Dhruva being a Godhead. Worship of mortals is so common, at least in our country, that no one can seriously attach religious significance to it. Such worship has no connection whatsoever with religion and is often motivated by fear of authority or by hope of reward. It is said that the remembrance and repetition of Dhruva's name has religious efficacy. The prevalence of such a belief amongst the Hindus has not been established and therefore there is no basis for saying that the mere mention of the Dhruva star will arouse the religious sentiments of Hindus amongst the electorate. In Sidhanti's case (A.I.R. 1965 S.C. 183) earlier referred to the use of pennants on which "Aum" or "OM" was inscribed was held not to fall within the prohibition enacted in s. 123(3) of the Act upon the ground that "Aum" does not symbolise religion or anything religious. Undoubtedly it has great spiritual or mystical significance. For according to the Upanishads it is from the primordial sound "Aum" that this phenomenal universe was projected and that this universe exists in and ultimately dissolves in "Aum". It is thus everything including God or Ishwara and the Supreme Brahman. Accordingly "Aum" is sacred to the Hindus. But this Court has held that even so, the use of pennants on which "Aum" was inscribed did not amount to use of or appeal to a religious symbol. Much less can the distribution of pamphlets on which a symbol to which no religious sanctity attaches be regarded as use of or appeal to a religious symbol.

As already stated, the Election Commission has itself allotted the symbol of star to the Swatantra Party. Would it be turned into a religious symbol because the star is described in the leaflets as the Dhruva star? In Webster's New Word Dictionary a symbol is described thus: "something that stands for or represents another thing; especially an object used to represent something abstract; emblem: as, the dove is a symbol of peace, the cross is the symbol of Christianity." The star, standing by

itself, was a symbol of the Swatantra Party. Would it become then a religious symbol unless, like the cross, it is regarded as a symbol of Hindu religion when it is associated with Dhruva ? It is impossible to say that any particular object, bird, or animal could be regarded as a "symbol of the Hindu religion". The basic concept of Hindu religion is that supreme being is in every "inanimate" object, plant, creature or person, i.e., in the entire creation and that the entire creation is within the Supreme Being. If, therefore, according to the fundamental concept of Hindu religion, God or Divinity is the reality or the substance of everything that exists, it would not be possible to say that any particular object is a symbol of the Hindu religion. It is true that various deities in the Hindu pantheon are associated with some specific objects, birds or animals. Thus, for example, Shiva is associated with a trident and a coiled cobra round his neck; Vishnu is associated with the cobra 'Shesha' on which he reclines as upon a bed; the eagle is associated with Vishnu as his vehicle; the goddess Lakshmi is associated with lotus upon which she stands and so on and so forth. Does it mean then that if a person uses a lotus or a cobra or a trident as his election symbol he will be appealing to the religious sentiments of the people ? The answer must be clearly in the negative.

What is a religious symbol has also been considered by this Court in *Shubnath Deogram v. Ram Narain Prasad & Ors* ([1960] 1 S.C.R. 953). In that case the appellant who had been set up by the Jharkhand Party had been elected to the Bihar Legislative Assembly. He was an Adibasi belonging to the Ho community and the electorate in that constituency largely consisted of Adibasis belonging to this community as well as to two others, Mundas and Oraons. The Election Commission had allotted 'Cock' as the emblem to the party. Now, a cock is not a religious symbol of Adibasis but it forms an integral part of the religious ceremonies which they perform worshipping some of their deities. The Jharkhand party issued and distributed leaflets in verse wherein an appeal was made by a cock for the votes of the electorate. The majority of the Judges held that this leaflet contained an appeal to the voters on the ground of religion and that the appellant was guilty of a corrupt practice falling within the purview of sub-s (3) of s. 123 of the Act. The conclusion of this Court was based not upon the mere fact of the use of the symbol of cock but it was based upon the nature of the appeal for votes made by the cock. In the leaflet the cock had said among other things : "Give me chara in the shape of voter I am victorious. Do not forget me, otherwise I tell, ye sons of men will suffer eternal miseries." According to this Court this, in substance, amounted to saying that it would please the deities if they did so because the cock in its turn was meant for sacrifice to the deities and it would displease them if they did not. The case is thus distinguishable from the one before us. Incidentally we may quote the following observations of Subba Rao J., as to what, according to him, was meant by the expression appealing to the religious sentiment. At p. 965 he says :

"A distinction must, therefore, be drawn between canvassing on grounds of religion and seeking of votes in graphic or picturesque language with analogies from religious lore : to illustrate, a candidate may appeal to the electorate consisting of persons professing different religions, say Hindus, Mohammadans, Christians etc., to vote for him and say that he would sacrifice his life in the cause of his constituency just like Christ sacrificed his life to redeem the world. He may also say that like Rama, the virtuous, who killed Ravana, the rakshasa, the embodiment of evil, he would, if elected, put down corruption, nepotism and the like in Government. He may even say that he would sacrifice himself as a goat before kali to bring happiness and prosperity to his constituency. All these similes are drawn from religion, but they do not embody and appeal, directly or indirectly, to vote for the candidate on grounds of religion."

We have quoted the learned Judge to point out that a reference to prophets or religions or to deities

venerated in a religion or to their qualities and deeds does not necessarily amount to an appeal to the religious sentiment of the electorate. Something more has to be shown for this purpose as indeed, according to the majority of the Judges who decided the case, was established therein. If, for instance, the illiterate, the orthodox or the fanatical electors are told that their religion would be in danger or they will suffer miseries or calamities unless they cast their vote for a particular candidate, that would be quite clearly an appeal to the religious sentiment of the people. Similarly if they are told that the wrath of God or of a deity will visit them if they do not exercise their franchise in a particular way or if they are told that they will receive the blessings of God or a deity if they vote in a particular way, that would be an appeal to the religious sentiment. Similarly if they are told that they should cast their vote for a particular candidate whose election symbol is associated with a particular religion just as the Cross is with Christianity, that will be using a religious symbol for obtaining votes. But where, as in the case of the Hindu religion, it is not possible to associate a particular symbol with religion, the use of a symbol even when it is associated with some deity, cannot, without something more, be regarded as a corrupt practice within the meaning of sub-s. (3) of s. 123 of the Act. For instance, a particular object or a plant, a bird or an animal associated with a deity is used in such a way as to show that votes are being solicited in the name of that deity or as would indicate that the displeasure of that deity would be incurred if a voter does not react favourably to that appeal, it may be possible to say that this amounts to making an appeal in the name of religion. But the symbol standing by itself cannot be regarded as an appeal in the name of religion.

How election literature should be construed has been considered by this Court in *Kultar Singh v. Mukhtiar Singh* (A.I.R. 1965 S.C. 141). In that case the question was whether upon a fair and reasonable construction, a poster published by or at the instance of an Akali candidate for election to the Punjab Legislative Assembly amounted to a corrupt practice under s. 123(3) of the Act. In that poster it was said that at this critical juncture it was the duty of the voters who were predominantly Sikhs to keep high the honour of the Panth, not to criticise the weaknesses of the leaders of the Panth and to defeat the opponents of the Panth at the general elections. This Court observed that the Akali Dal party was recognised as a political party for election purposes notwithstanding the fact that all of its members were only Sikhs. Then it observed :

"So long as law does not prohibit the formation of such parties and in fact recognises them for the purpose of election and parliamentary life, it would be necessary to remember that an appeal made by candidates of such parties for votes may, if successful, lead to their election and, in indirect way, may conceivably be influenced by considerations of religion, race, caste, community or language. This infirmity cannot perhaps be avoided so long as parties are allowed to function and are recognised though their composition may be predominantly based on membership of particular communities or religions. That is why we think, in considering the question as to whether a particular appeal made by a candidate falls within the mischief of s. 123(3), Courts should not be astute to read into the words used in the appeal anything more than can be attributed to them on its fair and reasonable construction.

..... The document must be read as a whole and its purport and effect determined in a fair, objective and reasonable manner. In reading such documents, it would be unrealistic to ignore the fact that .... the atmosphere is usually surcharged with partisan feelings and emotions and the use of hyperboles or exaggerated language, or the adoption of metaphors, and the extravagance of expression in attacking one

another, are all part of the game; and so, when the question about the effect of speeches delivered or pamphlets distributed at election meetings is argued in the cold atmosphere of a judicial chamber, some allowance must be made and the impugned speeches or pamphlets must be construed in that light."

We agree that election literature should neither be judged strictly nor taken literally. All the greater reason, therefore, that the Courts ought not to read more in such literature than what appears on its face. But what, unfortunately, the High Court has done in the case before us is to read more into the pamphlets than what they on their face contain.

As far as we have been able to understand the judgment of Desai C.J. what he seems to say is this : that the Pole Star must be equated with the devotion of Dhruva, that Dhruva was a highly religious person, that when the leaflet say that Dhruva stands for five things it refer to his religious qualities, that such a reference would bring to the mind's eye of the voter the religious virtues of Dhruva and that, therefore, the symbol must be held to have been intended to evoke religious sentiments of the voters and affect their religious susceptibilities.

We have already said what Dhruva stands for. To say, therefore, that voters who saw or read these leaflets were likely to conjure up in their minds the picture of a highly religious person and, therefore, their religious sentiments may been aroused would be too far fetched a conclusion to be justified.

We are, therefore, of the opinion that the High Court was in error in reversing the judgment of the Tribunal on this point.

Before Mr. Patel referred to the finding of the High Court regarding the validity of the second respondent's nomination paper Mr. S. T. Desai appearing for the appellant raised a preliminary objection to the effect that the first respondent was not competent to challenge the correctness of the finding as he had not preferred an appeal therefrom. In support of the contention he relies upon the decision of this Court in Vashist Narain Sharma v. Dev Chandra & Ors. ([1955] 1 S.C.R. 509, 519). That also was an appeal arising out of an election matter. Learned counsel for the respondent had tried to support the decision of the Tribunal on grounds which had been found against the appellant by the Tribunal. This Court did not permit him to do so on the ground that the provisions of the Code of Civil Procedure have no application to appeals brought by special leave under Art. 136 of the Constitution and observed :

"We have no appeal before us on behalf of the respondents and we are unable to allow that question to be re-agitated."

That judgment was relied upon on behalf of the appellant in Sri Baru Ram v. Shrimati Prasanni & Ors ([1959] S.C.R. 1403). Mr. Doabia who appeared there for the respondents challenged the correctness of the earlier decision but this Court observed :

"Prima facie there appears to be some force in this contention; but we do not think it necessary to decide this point in the present appeal. Mr. Aggarwal's objection assumes that respondent 1 should have preferred a petition for special leave to appeal against the finding of the High Court on the issue in question; if that be so, the application made by her for leave to urge additional grounds can be converted into a petition for special leave to appeal against the said finding, and the delay made in

filing the same can be condoned." (p. 1417)

It is obvious that the Division Bench followed the earlier Division Bench only because it has considered itself bound by it. It seems to us, with respect, that the earlier decision does not correctly represent the true legal position. For, as soon as special leave is granted there is an appeal before this Court and while dealing with such an appeal this Court exercises its civil jurisdiction. It is true that the rules framed by this Court in exercise of its rule making powers do not contain any provision analogous to O. XLI, r. 22 of the Code of Civil Procedure which permits a party to support the judgment appealed against upon a ground which has been found against him in that judgment. The provision nearest to it is the one contained on O. XVIII, r. 3 of the Rules of this Court which requires parties to file statement of cases. Sub-rule (1) of that rule provides that Part I of the statement of the case shall also set out the contentions of the parties and the points of law and fact arising in the appeal. It further provides that in Part II a party shall set out the propositions of law to be urged in support of the contentions of the party lodging the case and the authorities in support thereof. There is no reason to limit the provision of this rule only to those contentions which deal with the points found in favour of that party in the judgment appealed from. Apart from that we think that while dealing with the appeal before it this Court has the power to decide all the points arising from the judgment appealed against and even in the absence of an express provision like O. XLI, r. 22 of the Code of Civil Procedure it can devise the appropriate procedure to be adopted at the hearing. There could be no better way of supplying the deficiency than by drawing upon the provisions of a general law like the Code of Civil Procedure and adopting such of those provisions as are suitable. We cannot lose sight of the fact that normally a party in whose favour the judgment appealed from has been given will not be granted special leave to appeal from it. Considerations of justice, therefore, require that this Court should in appropriate cases permit a party placed in such a position to support the judgment in his favour even upon grounds which were negatived in that judgment. We are, therefore, of the opinion that in Vasisht Narain Sharma's case ([1955] 1 S.C.R. 509) too narrow a view was taken regarding the powers of this Court and we over-rule the preliminary objection of Mr. S. T. Desai.

In so far as the age of the second respondent is concerned the High Court has fully considered the evidence and has rightly rejected the entries in the birth and death register maintained by the police Patel and instead accepted the school certificates pertaining to the second respondent in which his date of birth is stated. We need not say anything more on this point as Mr. Patel, who appears for the first respondent, has not seriously challenged the finding of the High Court. Upon this view we hold no ground has been made out for setting aside the election of the appellant, allow the appeal, set aside the decisions of the High Court and the Election Tribunal and dismiss the election petition with costs throughout.

Appeal allowed.

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