

Har Swarup & Another

Vs

Brij Bhushan Saran & Others

Civil Appeal No. 1141 of 1965

(J. M. Shelat, G. K. Mitter, K. N. Wanchoo JJ)

14.09.1966

JUDGMENT

WANCHOO, J.

This appeal on a certificate granted by the Allahabad High Court raises the question of interpretation of s. 82(b) of the Representation of the People Act, No. 43 of 1951, (hereinafter referred to as the Act). The facts necessary for present purposes are these. In the election to the U.P. Legislative Assembly from Dehra Dun City constituency in 1962. Brij Bhushan Saran respondent was one of the candidates and was declared elected. One Raturi Vaid was another candidate at the same election. He however withdrew his candidature within the time fixed for withdrawal. He belonged to the same party as the returned candidate and worked for him. After the election, an election petition was filed by two electors praying that the election of Brij Bhushan Saran be set aside, and one of the grounds with which alone we are concerned in the present appeal was that Raturi Vaid had threatened an elector after the date of his withdrawal from the candidature that the elector's bones would be broken if he did not cast his vote for Brij Bhushan Saran and also did not work for him and persuade others to vote for him. The Election Tribunal held that this amounted to a corrupt practice within the meaning of s. 123(2) read with the proviso (a)(i) thereof. It further held that as this corrupt practice was committed by a candidate, namely, Raturi Vaid, it was necessary to join him as respondent to the petition. As this was not done, the Tribunal dismissed the petition under s. 90(3) of the Act.

Thereupon there was an appeal to the High Court, which upheld the view taken by the Tribunal. The High Court however granted a certificate to appeal to this Court; and that is how the matter has come before us.

It is not in dispute now that the allegation made with respect to the conduct of Raturi Vaid would amount to a corrupt practice within the meaning of s. 123(2) of the Act. What is however contended is firstly that there was no allegation of corrupt practice against Raturi Vaid, and secondly that even if that was so, Raturi Vaid could not come within the meaning of the words "any other candidate" used in s. 82(b) inasmuch as he withdrew his candidature as provided in s. 37 of the Act.

We are of opinion that there is no force in the first contention raised on behalf of the appellants. There is no doubt that the allegation was that it was Raturi Vaid who gave the threat, though it was alleged that he did so in furtherance of the election of Brij Bhushan Saran and on his behalf. Whatever may be the effect of such a threat held out by Raturi Vaid on the election of Brij Bhushan Saran, the primary allegation certainly was that it was Raturi Vaid who had committed the corrupt practice, though Brij Bhushan Saran was also alleged to be party to it and therefore liable for the

consequences. In these circumstances it is impossible to accept that the allegation of corrupt practice was only against Brij Bhushan Saran and not against Raturi Vaid. As we have said already, the primary allegation was against Raturi Vaid, though Brij Bhushan Saran was also made liable for the corrupt practice alleged to be committed by Raturi Vaid on the ground that it was done on his behalf and in furtherance of his election. It must therefore be held that there was an allegation of corrupt practice against Raturi Vaid in this case.

This brings us to the main question raised in the present appeal namely, whether Raturi Vaid can be said to be "any other candidate" within the meaning of those words in s. 82(b). In this connection, the appellants rely on a decision of the Patna High Court in *Kapildeo Singh v. Suraj Narayan Singh* (A.I.R. 1959 Pat. 250.), which certainly is in their favour. That decision however has not been accepted by the Allahabad High Court which took the view that even though Raturi Vaid might have withdrawn his candidature under s. 37 of the Act, he would certainly be covered by the words "any other candidate" in s. 82(b).

The word "candidate" has been specially defined in s. 79(b) for the purpose of parts VI, VII and VIII of the Act, and s. 82(b) with which we are concerned is in Part VI. According to this definition, a "candidate" means a person who has been or claims to have been duly nominated as a candidate at any election, and any such person shall be deemed to have been a candidate as from the time when, with the election in prospect, he began to hold himself out as a prospective candidate. It cannot be and has not been disputed that Raturi Vaid is covered by this definition, for he was duly nominated though he later withdrew his candidature under s. 37 of the Act. What is however contended is that even though Raturi Vaid might be a candidate within the definition of s. 79(b), this is a case where in the context of s. 82(b), the words "any other candidate" mean a candidate who has not withdrawn under s. 37 of the Act. Part VI provides for disputes regarding election and begins with s. 79, which defines certain words including the word "candidate" as used in this Part. Section 80 provides for an election petition and s. 81 for presentation of such petition and other matters. Then comes s. 82 which is in these terms :

"A petitioner shall join as respondents to his petition -

(a) where the petitioner, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidate has been duly elected, all the contesting candidates other than the petitioner, and where no such further declaration is claimed, all the returned candidates; and

(b) any other candidate against whom allegations of any corrupt practice are made in the petition."

The terms of s. 82 show what persons must be joined as respondents to an election petition. Clause (a) shows that where a petitioner is only claiming a declaration that the election of all or any of the returned candidates is void, he has to join all the returned candidates to the petition and no more. Further, where the petitioner in addition to claiming a declaration that the election of all or any of the returned candidates is void claims a further declaration that he himself or any other candidate has been duly elected, he has to join not only the returned candidates but all the contesting candidates. So far as the words "returned candidates" and "contesting candidates" are concerned, there is no difficulty as to what they mean. A returned candidate is one who has been elected and a contesting candidate is one who has not withdrawn his candidature under s. 37. It is true that in cl.

(a) of s. 82 where we find the words "he himself or any other candidate", "any other candidate" there means any other contesting candidate. That is clear from the context, for there is no question of declaring a person who has withdrawn his candidature as duly elected. But the same in our opinion cannot be said of the words "any other candidate" used in cl. (b) of s. 82. There is no indication in cl. (b) to suggest that "any other candidate" only refers to a candidate who has not withdrawn his candidature under s. 37. The use of the words "any other candidate" in cl. (b) is really in contrast to the candidates who are to be made parties under cl. (a). Under cl. (a) persons who are to be made parties to the petition are -

(a) returned candidates,

(b) contesting candidates,

depending upon the kind of declaration claimed in the petition. Where, for example, there is no claim for a further declaration in an election petition, only returned candidates would be made respondents under cl. (a). But if there are allegations of corrupt practice against any candidate other than the returned candidate, he would have to be made a party under cl. (b) as "any other candidate". Similarly where a declaration is asked for in the petition that a particular candidate has been duly elected, all the returned candidates as well as all the contesting candidates have to be made parties under cl. (a). Even in such a case if there is allegation that any other candidate besides the returned candidates and the contesting candidates has been guilty of corrupt practice, cl. (b) requires that he should also be made a respondent. There is in our opinion no reason for cutting down the meaning of the word "candidate" as defined in s. 79(b) for the purpose of s. 82(b) in the manner suggested on behalf of the appellants, namely, that in s. 82(b) the candidate is only one who has not withdrawn his candidature under s. 37.

We are of opinion that the context does not so require and as a matter of fact it does appear necessary to give the full meaning to the word "candidate" in s. 82(b) as defined in s. 79(b). Take the case of a candidate like Raturi Vaid who was apparently an alternative candidate of the party to which Brij Bhushan Saran belonged and who withdrew his candidature after Brij Bhushan Saran's nomination was accepted. Suppose that instead of committing the alleged corrupt practice after he withdrew his candidature, Raturi Vaid was alleged to have committed it before his withdrawal. In such a case it is conceded on behalf of the appellants that till the withdrawal under s. 37 of the Act, the person withdrawing is still a candidate for, according to the appellants, it is only after he withdraws that he can no longer be called a candidate. So if Raturi Vaid had committed the alleged corrupt practice before the date of his withdrawal under s. 37 he would, even according to the appellants, be a candidate at the time when he is said to have committed the corrupt practice and would be a necessary party under s. 82(b). We however see no reason why he could not be a candidate for the purpose of s. 82(b), simply because he committed the alleged corrupt practice after his withdrawal. Purity of elections is a matter of great importance, and it is for the purpose of maintaining this purity that we have the provisions contained in s. 123 of the Act. There is also no doubt that if a covering candidate (like, Raturi Vaid) is not treated as a candidate till the date of his withdrawal, he would be free to commit all kinds of corrupt practices defined in s. 123 of the Act, on behalf of the candidate whom he covers, with impunity. This could not be the intention of the Act and that is why learned counsel for the appellants had to concede that if the alleged corrupt practice had been committed before the date of withdrawal, it would be necessary to join Raturi Vaid as a respondent under s. 82(b). But the argument is that as the alleged corrupt practice was committed after the date of his withdrawal he would not be a candidate within the meaning of s. 82(b). We are of opinion that if the effect of withdrawal is said to be that a person nominated can no

longer be considered to be a candidate only after his withdrawal, the date of withdrawal cannot be a dividing line as to the time upto which he can be treated as a candidate and the time after which he cannot be treated as a candidate. If purity of elections has to be maintained a person who is a candidate as defined in s. 79(b) of the Act will remain a candidate even after he withdraws till the election is over, and if he commits a corrupt practice whether before or after his withdrawal he would be a necessary party under s. 82(b) of the Act. We are therefore of opinion that the view taken by the Patna High Court on which reliance has been placed on behalf of the appellants is not correct and the decision of the High Court under appeal is correct.

We may in this connection refer to two decisions of this Court. In Mohan Singh v. Bhanwarlal & others ([1964] 5 S.C.R. 12.), it was held that by the definition of the word "candidate" in s. 79(b), the expression "any other candidate" in s. 82(b) must include a candidate who had withdrawn his candidature. The same view was taken in Amin Lal v. Hunna Mal ([1965] 1 S.C.R. 393.). In that case it was held that a duly nominated candidate though he withdrew his candidature within the time permitted by the Rules must for the purpose of s. 82 be still regarded as a candidate. It has been urged that the point was not contested in these two cases and therefore the decision therein is not binding. With respect, we agree with the view taken in these two cases for the reasons which we have already given. It is not disputed that if Raturi Vaid was a candidate within the meaning of that word in s. 82(b), the election petition was liable to be dismissed under s. 90(3) of the Act.

The appeal therefore fails and is hereby dismissed with costs.

R.K.P.S.

Appeal dismissed.

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