

Manubhai Nandlal Amorsey

Vs

Popatlal Manilal Joshi and Others

Civil Appeal No. 1428 of 1968

(S. M. Sikri, R. S. Bachawat, K. S. Hegde JJ)

23.04.1968

JUDGMENT

BACHAWAT, J. -

1. This appeal is directed against a judgment of a single judge of the Gujarat High Court setting aside the election of the appellant from the Banaskantha Parliamentary constituency. At the last general election to the Lok Sabha from the Banaskantha constituency in Gujarat, there were three contesting candidates. The appellant, the Swatantra Party candidate, secured 1,10,028 votes. Respondent No. 2, the Congress Party candidate secured 1,05,621 votes. Respondent No. 3, an Independent candidate, secured 14,265 votes. The appellant was declared elected.

2. The election petition was filed by respondent No. 1, an elector in the constituency. Respondent No. 1 alleged a number of corrupt practices on the part of the appellant or his election agents, but at the trial, he pressed only the charge of corrupt practice under Section 123(2) proviso (a)(ii) of the Representation of the People Act, 1951. In the petition the charge was that several persons with the consent of the appellant or his election agents induced or attempted to induce the electors to believe that if they voted for the Congress Party candidate they would become the objects of divine displeasure and spiritual censure. In the particulars of this charge it was alleged that in the public meetings held at Amirgadh, Ikbalgadh, Wav, Laxmipura, Tharad, Bhabhar and other places one Shambhu Maharaj told the electors that if they voted for the Congress candidate, they would commit the sin of cow-slaughter and urged them in the name of mother cow to take a vow not to vote for the Congress candidate with the result that several members of the audience publicly took the vow.

3. At a late stage of the trial on March 7, 1968, the High Court gave leave to respondent No. 1 to amend the petition by adding fresh particulars of the corrupt practice. The substance of the new charge was that at those meetings Shambhu Maharaj induced or attempted to induce the electors to believe that their religious head Jagadguru Shankracharya had commanded them not to vote for the Congress and that contravention of his command would be a sin and would be visited with spiritual censure and divine displeasure. The High Court found that the aforesaid corrupt practice committed by Shambhu Maharaj with the consent of one Punambhai, the election agent of the appellant, and declared the appellant's election to be void.

4. The appellant challenges the legality of the order passed by the High Court on March 7, 1968, allowing the amendment. The election petition was filed on April 10, 1967. The appellant filed his written statement on June 1, on September 9, the High Court gave leave to Respondent No. 1 to amend the petition, by adding the charge that certain persons were threatened that they would

commit the sins of Go-hatya, Brahma-hatya and Sadhu-hatya if they worked for the Congress candidate. The order disallowed amendments seeking to introduce charges of appeal to voters in the name of religion under Section 123(3). The appellant filed his additional written statement on October 19. Issues were framed on November 30. Respondent No. 1 filed his list of witnesses on January 11, 1968. On February 21, the trial started and P.W. 1, P.W. 2, P.W. 3, and P.W. 4, were examined. P.W. 4, Ram Swarup was a witness with regard to the meeting at Amirgadh. The issues were amended on March 1, so as to make it clear that there was no charge of any corrupt practice under Section 123(3). On the same date, Respondent No. 1 was examined as P.W. 5. On March 2, P.W. 6, P.W. 7, P.W. 8 and P.W. 9 were examined. P.W. 7, and P.W. 8, spoke about the meetings at Palanpur and Bhabhar. P.W. 9, Bhogilal, spoke about the meeting at Ikbalgadh. On March 4, P.W. 10 and P.W. 11 were examined and spoke about the meetings at Wav and Laxmipura. On the same day, P.W. 12, S. P. Pandya, a Sub-Inspector of Police at Palanpur, and P.W. 13, C. B. Barot, a short-hand writer were examined. The examination of Barot was concluded on March 6. Barot proved that he took short-hand notes of the speeches of Shambhu Maharaj at Ikbalgadh, Amirgadh, Bhabhar, Laxmipura, Wav and Tharad and sent reports of the speeches to S. P. Pandya. On March 6, P.W. 14 and P.W. 15, were examined. On March 5, Respondent No. 1 filed an application for leave to amend the petition by adding portions of the speeches which referred to the command of Sankracharya not to vote for the Congress and the consequences of not obeying the command. The application was allowed on March 7, 1968. The trial was then adjourned and started again on April 8. Between April 8 and April 15, P.W. 17, P.W. 18, D.W. 1 and D.W. 2 were examined. The judgment was delivered on April 22 and 23.

5. The first question is whether the trial judge should have allowed the amendment. Section 83(1)(b) provides 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 practice". The section is mandatory. Where a corrupt practice is charged against the returned candidate the election petition must set forth full particulars of the corrupt practice so as to give the charge a definite character and to enable the court to understand what the charge is. The charge must be substantially proved as laid down and evidence cannot be allowed to be given in respect of a charge not disclosed in the particulars. On a charge of telling the electors that by giving their vote to the Congress candidate, they would commit sin of Go-hatya, evidence cannot be led to prove the charge of telling them that they would commit a sin of Brahma-hatya or the sin of disobeying the command of their religious leader. Section 86(5) allows amendment of the particulars. It provides that "the High Court may, upon such terms as to cost and otherwise as it may deem fit, allow the 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, but shall not allow any amendment of the petition which will have the effect of introducing particulars of a corrupt practice not previously alleged in the petition". In *Harish Chandra Bajpai v. Triloki Singh* (1957 SCR 371) the court held that though under the English law the petitioner was not obliged to give the particulars of the corrupt practice in his petition the difference was a matter of form and not of substance and that under Section 83(3) as it stood before 1955 the court could allow an amendment introducing fresh instances of the corrupt practice alleged in the petition. Referring to the English practice the court observed at page 382 : "it is sufficient if the particulars are ordered to be furnished within a reasonable time before the commencement of the trial." Section 83(3) has been repealed and is now replaced by Section 86(5) which forbids any amendment introducing particulars of a corrupt practice not previously alleged in the petition. Assuming that the amendment of March 7, 1967, was permissible under Section 86(5), the question is whether the High Court

rightly allowed it. Normally an application for amendment under Section 86(5) should be made within a reasonable time before the commencement of the trial. The Court has power to allow an amendment even after the commencement of the trial, but as a rule leave to amend at a late stage should be given in exceptional cases where the petitioner could not with reasonable diligence have discovered the new facts earlier. Leave to amend will not be given if the petitioner is not acting in good faith or has kept back the facts known to him before the trial started.

6. According to Respondent No. 1, Shambhu Maharaj committed corrupt practice at election meetings held at Ikbalgadh where P.W. 9 was present, Amirgadh where P.W. 4 was present and at Wav where one Chotaji Bhattji was present and that he came to know of the corrupt practices from those persons. All the meetings are referred to in the election petition. If Shambhu Maharaj had told the electors that Sri Shankracharya had commanded them not to vote for the Congress candidate and that disobedience of his command would be sinful, P.W. 4 and Chotaji Bhattji must have informed Respondent No. 1 of this corrupt practice before April 10, 1967, when the election petition was filed. No explanation is given as to why Respondent No. 1 withheld this information in the petition. Respondent No. 1 now says that on April 17, 1967, he applied for certified copies of the reports of C. B. Barot to the Deputy Inspector-General of Police, C.I.D., Ahmedabad, but the application was rejected on May 14, 1967. Assuming that he could not get certified copies of the reports, he could set forth in the petition the substance of the charge with regard to the command of Sri Shankracharya from the information supplied by his informants. He knew of the reports of C. B. Barot before April 17, 1967. Immediately after filing the election petition he could subpoena the reports and under orders of the court he could inspect them long before the trial started. He was aware that the charge of telling the electors that they would commit the sin of Go-hatya was quite different from the charge of telling them that they would commit the sin of Brahma-hatya or the sin of disobeying the command of their religious leader Sri Shankracharya. On September 25, 1967, he obtained an order giving him leave to amend the petition by adding the charge with regard to the sins of Brahma-hatya and Sadhu-hatya, but he deliberately refrained from adding the charge with regard to the sin of disobeying the command of Sri Shankracharya. The trial commenced on February 29, 1968. On that date P.W. 4 said that at the Amirgadh meeting Shambhu Maharaj told the electors that he had brought a mandate from Jagadguru Shankracharya. On an objection being raised by the appellant's counsel, Mr. Mehta, counsel for Respondent No. 1, agreed that the statement of P.W. 4, would not be treated as part of the evidence on the record. Thereafter the trial proceeded and 11 more witnesses were examined on the footing that Respondent No. 1 would not rely on the charge with regard to the command of Jagadguru Shankracharya. On that footing the appellant's counsel adopted a definite line of cross-examination. On March 4, he consented to the marking of the full reports of the speeches of Shambhu Maharaj as exhibits and on March 5, he extracted an admission from Barot that the witness had taken verbatim notes of the speeches of Shambhu Maharaj. Counsel adopted this line of cross-examination because he took the stand that the speeches did not prove the corrupt practice alleged in the petition. The application for amendment was filed on March 5 and was allowed on March 7. The order allowing the amendment has resulted in manifest injustice to the appellant. His counsel could not thereafter take the stand that the reports had been fabricated at the instance of the Congress party. Respondent No. 1 moved the application for amendment in bad faith at a very late stage of the trial. He deliberately refrained from taking the new charge earlier.

7. Under Section 116-A an appeal lies to this court on any question whether of law or fact from the order of the High Court. The procedure in appeal is regulated by Section 116-C. All the provisions of the Code of Civil Procedure including Section 105 apply to the appeal, and any error in an order of the trial court affecting the decision of the case may be taken as a ground of objection in the

appeal. In an appeal under Section 116-A the whole case is within the jurisdiction of this Court. Normally the court does not interfere with the Judge's discretion in granting amendments except on grounds of law but where, as in this case, the order has resulted in manifest injustice, the court has the power and the duty to correct the error. In *Evans v. Bartlam* (1937 AC 473, 480-481) Lord Atkin observed :-

"Appellate jurisdiction is always statutory : there is in the statute no restriction upon the jurisdiction of the court of appeal : and while the appellate court in the exercise of its appellate power is no doubt entirely justified in saying that normally it will not interfere with the exercise of the judge's discretion except on grounds of law, yet if it sees that on other grounds the decision will result in injustice being done it has both the power and the duty to remedy it."

8. We, therefore, hold that the order of the trial judge allowing the amendment was erroneous and must be set aside.

9. Respondent No. 1 proved six speeches of Shambhu Maharaj. He did not rely in the trial court on the speeches at Laxmipura, Bhabhar and Tharad. Mr. Gokhale stated that he did not rely on these speeches for any purpose whatsoever. Accordingly, those speeches were not read in this Court. There is no charge against the appellant on the ground of appeal to the electors on the ground of religion. The only charge against him is that in his speeches at Ikbalgadh, Amirgadh and Wav, Shambhu Maharaj with the consent of his election agent Punambhai told the electors that "if they voted for the Congress Party candidates the voters would commit the sin of cow-slaughter (gaumata vadh)". Respondent No. 1 has not proved the charge that the electors were urged in the name of mother cow to take a vow not to vote for the Congress Party candidates, with the result that several members of the audience publicly took the vow. The Ikbalgadh speech (Ex. B-1) and the Amirgadh speech (Ex. B-3), were delivered on February 9, 1967. The Wav speech (Ex. B-4) was delivered on February 9, 1967. There was then an acute political controversy with regard to the total ban on cow-slaughter. Under Section 5(1) of the Bombay Animal Preservation Act, 1954 (Bombay Act No. LXXII of 1954), as amended by Gujarat Act, No. XVI of 1961, there was a total ban on cow-slaughter in Gujarat. But there was no absolute ban on cow-slaughter in several other States. The Swatantra Party was agitating for a total ban on cow-slaughter throughout India. Public criticism of the Congress Party for not abolishing cow-slaughter throughout the country was permissible and legitimate. But the criticism ceases to be legitimate if the speaker commits the corrupt practice of undue influence under Section 123(2), that is, if he interferes or attempts to interfere with the free exercise of electoral right. Under Section 123(2), proviso (a), clause (ii), there is such undue influence if any person with the consent of the candidate or his election agent "induces or attempts to induce a candidate or an elector to believe that he, or any person in whom he is interested, will become or will be rendered an object of divine displeasure or spiritual censure". The actual effect of the speech is not material. Corrupt practice is committed if the speech is calculated to interfere with the free exercise of electoral right and to leave no choice to the electors in the matter, see *Ram Dial v. Sant Lal & Others.* (1959 supp (2) 748, 758, 760)

10. In considering the speeches the status of the speaker and the character of the audience are relevant considerations. Shambhu Maharaj was a Kirtankar of repute and well known and respected for his lectures on Hindu religion. The audience consisted mostly of illiterate and orthodox Hindus of the rural areas, adivasis and rabaris belonging to the scheduled tribes and scheduled castes. In this background, let us now consider the speeches. Respondent No. 1 charges corrupt practice in respect of 4 passages in the Ikbalgadh speech (Ex. B-1), 6 passages in the Wav speech (Ex. B-4) and 3

passages in the Amirgadh speech (Ex. B-3). The learned trial judge found that the corrupt practice was not committed by the 1st and 2nd passages in Ex. B-1, the 1st, 2nd and 3rd and 6th passages in Ex. B-4 and the 1st passage in Ex. B-3.

11. But the learned Judge held that 3rd and 4th passages in Ex. B-1 and the 4th and 5th passages in Ex. B-4 amounted to corrupt practice as the electors were told that Sri Shankracharya had commanded them not to vote for the Congress and that if they disobeyed his command they would incur divine displeasure and spiritual censure. We have disallowed the amendment introducing this charge and we must therefore set aside the finding of the learned judge with regard to those passages. We find that the passages do not show any corrupt practice as alleged in the petition.

12. In the 2nd passage in the Amirgadh speech (Ex. B-3) the speaker referred to the ban on cow-slaughter in Pakistan, Afghanistan and Madhya Pradesh and said that the Swatantra Party had promised to ban slaughter of cow progeny and exemption of land revenue. He also said :

"Sun rises and twenty two thousand cows are slaughtered ..... in Ahmedabad there is a prohibition on cow-slaughter but the slaughtering of calf and ox is continued. The earth took the form of a cow and if the said "Gaumata" or ox is slaughtered how can earth be satisfied and so long as the earth is not satisfied how can there be fertility in the earth."

In the third passage (Ex. B-3), the speaker said :

"In the year 1942 sixteen lakhs and in 1946 twenty-four lakhs and in 1947 after India became separate and at present about 1 crore cows are slaughtered. You say whether to vote for Congress is to become partner in sin or anything else. If you give co-operation for good cause you may get good fruit and if you co-operate in committing a sin you become a partner of sin. Why you become a partner of sin by giving votes to Congress ?"

He then referred to the command of Sri Shankracharya that the electors should not vote for the Congress Party. But even part from the command of Sri Shankracharya the electors are distinctly told that though there was a ban on cow-slaughter in Ahmedabad, the Congress was permitting the slaughter of crores of cows elsewhere in India and was committing the sin of gohatya and those who vote for the Congress would be partners in the sin. The dominant theme of the speech was that those who commit the sin of gohatya would be visited with divine displeasure. Having regard to the character of the audience, the speech was calculated to interfere with the free exercise of electoral right. In *Narbada Prasad v. Chhagan Lal & Others*, (CA No. 2 (NCE) of 1968, decided on 30-7-68) Hidayatullah, C.J., observed:

"It is not necessary to enlarge upon the fact that cow is venerated in our country by the vast majority of the people and that they believe not only in its utility but its holiness. It is also believed that one of the cardinal sins is that of gohatya. Therefore, it is quite obvious that to remind the voters that they would be committing the sin of gohatya would be to remind them that they would be objects of divine displeasure or spiritual censure."

In *Encyclopaedia of Religion and Ethics*, edited by James Hastings, Vol. IV., pp. 225, 226, it is stated :-

"A well known verse (Mahabharata, xiii 74.4) says :

"All that kill, eat and permit the slaughter of cows, rot in hell for as many years as there are hairs on the body of the cow so slain."

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"Reverence for the cow has not diminished in modern times. It is well known that the Hindus of the present day are filled with horror at the slaughter of the cow, which is therefore prohibited in native States under treaties with the English."

According to B. N. Mehta's Modern Gujarati-English Dictionary, Vol. I, page 480, gohatya (go, a cow-hatya, killing) means in Gujarat 'slaughter of a cow; killing a cow, being one of the five great sins according to Hindu scriptures which can be atoned for only with capital punishment."

13. Accordingly, the offending passages in the Amirgadh speech fell within Section 123(2), proviso (a)(ii). We are satisfied that Shambhu Maharaj spoke at the Amirgadh meeting with the consent of Punambhai, the election agent of the appellants. Punambhai was present at the Amirgadh meeting. He addressed the meeting before Shambhu Maharaj spoke. Shambhu Maharaj addressed several other election meetings of the Swatantra Party. Punambhai issued a pamphlet calling one of the meetings. P.W. 10 proved that he was asked by Punambhai to call Shambhu Maharaj for addressing another meeting as the voters were uneducated and had deep belief in religion. Punambhai accompanied Shambhu Maharaj from one place to another. On February 8, 1967, he went with Shambhu Maharaj to the meeting at Ikbalgadh and thereafter went to Amirgadh. On February 9, he went with Shambhu Maharaj to the meeting at Wav. The offending passages of the speech at the Amirgadh meeting are integral parts of the dominant theme of the sin of cow-slaughter. They cannot be regarded as stray words spoken by Shambhu Maharaj without Punambhai's consent. Punambhai did not raise any objection to the impugned speeches at the meeting. He gave evidence in court but did not say that he was not a consenting party to the offending passages. We hold that the corrupt practice under Section 123(2), proviso (a)(ii) was committed at the Amirgadh meeting February 8, 1967, with the consent of the election agent of the appellants.

14. In the result, the appeal is dismissed. There will be no order as to costs.

HEDGE, J. -

I have had the advantage of reading the judgment just now read out by Bachawat, J. I agree that the appeal should be dismissed. But I am unable to agree that the amendment complained of was not properly allowed. The learned trial judge has given good reasons in support of his order. In my opinion no case is made out to interfere with that order. I am also of the opinion that each and every one of the speeches made by Shambhu Maharaj which are the subject-matter of this appeal, read as a whole as we should do, fall within the vice of proviso (a)(ii) of Section 123(2) of the Representation of the People Act, 1951. Nothing so bad as those speeches I have come across in election cases. They are fanatical outpourings and a direct challenge to the concept of a secular democracy.

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