

SUPREME COURT OF INDIA

Lakhi Prasad Agarwal, Dr.

Vs.

Nathmal Dokania

C.A.No.20 of 1968

(M. Hidayatullah, C.J.I. and G. K. Mitter, J.)

06.09.1968

JUDGEMENT

MITTER, J.:-

1. This is an appeal by an unsuccessful candidate at an election held in February 1967 for the Bihar State Legislative Assembly from the Single Member Rajmahal Constituency No. 139. Originally there were eight candidates: we are concerned only with two of them, namely, the election petitioner and respondent, Nathmal Dokania, the returned candidate as a result of the election. The election petitioner lost before the High Court. The main ground on which he presses this appeal are based on paras 4(c) and 4 (e) of the petition. The relevant issue framed by the learned trial Judge with regard to paragraph 4 (c) is issue No. 5 reading:-

"Did the respondent or his election agent or his workers with his or his election agent's consent resort to corrupt practices in the election as alleged by the petitioner and has the result of the election been materially affected thereby?" In para 4 (c) it is pleaded that the respondent himself and his agents and workers including certain name persons with his consent "committed a corrupt

practice of publication of statement of facts throughout the constituency and mainly at Shahebganj, Teen Pahar and Rajmahal during the election campaign during the period 11th February 1967 to 15th February 1967 which induced and caused deception in the mind of the electors whereby the respondent procured a large number of votes which he would not otherwise have secured but for the corrupt practice aforesaid." Copies of the pamphlets form Annexure 2 series to the petition.

2. Mr. Latifi appearing for the appellant submitted that Annexure 2 (A) does not further his client's cause. His grievance is based on Annexure 2. The translation of this Annexure of which the original was in Hindi shows that it was a call to the Muslim voters of Rajmahal to "hear the message and prepare the graveyard for the Congress." Reference was made therein to the appeal of the day by Maulana Syed Usman Ghani Saheb of Phulwari Sharif Khankah "that nobody should be in illusion that Muslims have to vote for the Congress this time also". It was also suggested that on account of high-handedness of the Congress group Muslims should not support it. There was also a reference to the appeal of Pir Saheb of the Dargah of Phulwari Sharif that Muslims should not vote for any Congress candidate. The appeal ends with the sentence, "when you have lifelong connection with Sri Nathmal Dokania, the candidate of the Swatantra Party and when the Head of your religion, your Islam also opposes the Congress, then it becomes your duty to come out victorious by affixing stamps on the 'Star' symbol."

3. Mr. Latifi tried to argue that by the publication of the pamphlet an attempt was made to induce Muslim electors not to vote for a Congress candidate in opposition to the mandates of the two name religious heads. In other words, his contention was that undue influence within the meaning of Section 123 (2) of the Act was sought to be exercised on the Muslim voters in the name of the religious heads mentioned in the pamphlet under the threat of divine displeasure or spiritual censure. He also sought to argue that the reference to the mandate of Islam in the pamphlet amounted to the use of a religious symbol and as such the appeal by the pamphlet came within the mischief of Section 123 (3) of the Act.

4. Under section 128 (2), a candidate may be guilty of corrupt practice if he uses 'undue influence' which in the words of the section means any direct or indirect interference or attempt to interfere with the free exercise of any electoral right of a voter. Mr. Latifi's submission was that the pamphlet came within the mischief of sub-clause (ii) of proviso (a) to Section 123 (2). Unfortunately for Mr. Latifi although the pamphlet might have sustained a plea of undue influence about which we express no opinion, there is no pleading to that effect in the petition. In order that a pleading may be sufficient to make out a case of undue influence, it must set out full particulars of it under the provisions of S. 83 (1) (c) of the Act which may be compared with Order, 6, Rule 4 of the Code of Civil Procedure. The said provision of the Act read with Section 123 (2) makes it obligatory on a party setting up a case of corrupt practice by exercise of undue influence as suggested, to give full particulars thereof by stating inter alia who attempted to induce electors to believe that voting for a particular person would render them objects of divine displeasure or spiritual censure and in what manner such attempts were made. The real charge in paragraph 4 (c) of the petition is that the pamphlet complained of misled the electors by false statements. Such a pleading falls far short of an allegation of undue influence by an attempt to make electors exercise their franchise in a particular

manner. Para 4(c) does not even mention Muslim voters and does not contain any averment to the effect that they were sought to be influenced by the opinion of the religious heads.

5. Mr. Latifi's attempt to bring his case under Section 123 (3) is equally futile. Mr. Latifi sought to argue that Islam was a religious symbol of Muhammadans and the publication of the pamphlet containing a reference to the mandate of Islam was an attempt to prejudicially affect the election of the petitioner. This case too is not borne out by the pleadings. Failing in his attempt to bring the case under the two sub-sections mentioned already, he tried to bring his case under Section 123 (4) of the Act. In this too, in our view, he cannot succeed. To bring the case under this sub-section, there must be a publication by the candidate or his agent of any statement of some fact which is false, and which he believed to be false or did not believe to be true in relation to the personal character or conduct of any candidate, or in relation to the candidature or withdrawal of any candidate, being a statement reasonably calculated to prejudice the prospects of that candidate's election. The pamphlet does not cast any aspersion on the personal character or conduct of the election petitioner. Nor is there any false statement in relation to the candidature of the petitioner. In fact there is no reference to him at all. Consequently, the election petition does not attract the operation of the aforementioned sub-sections of Section 123 of the Act. The learned trial Judge should not have entertained any argument under sub-ss. (3) and (3A) of Section 123 of the Act as in view of the pleadings issue No. 5 did not permit the raising of such contentions. In view of the pleadings we did not permit Mr. Latifi to pursue his arguments on this issue on the basis of Section 123 sub-sections (2) or (3) of the Act.

6. That leaves us only with the allegation in para 4 (e) of the petition which runs thus:

"The election of the respondent is void, 'because the Returning Officer who is also the Sub-Divisional Magistrate of the area, in collusion with the respondents harassed the petitioner in all possible ways so much so that a mere application for correction in the petitioner's name was allowed at the last juncture and the petitioner had been arrested the very next day of the said application, was put in jail for eight valuable days and thereby prevented from pursuing the election campaign."

The issue under which the above complaint was sought to be raised was the general one, namely, whether the election of the respondent is liable to be set aside? Mr. Latifi drew our attention to portions of the testimony of the returning officer where he denied that he was in collusion with Nathmal Dokania or that because of such collusion he got the petitioner arrested after he had filed applications for correction of the entries with respect to his name in the electoral roll. He also denied that he got the petitioner arrested with any mala fide intention so that he might not be able to contest the election. In his cross-examination, the returning officer referred to the proceedings started against the petitioner and said that the petitioner had been arrested once in January and for a second time in February 1967. The arrest in January 1967 was in connection with proceedings under Section 107 of the Code of Criminal Procedure. The arrest in February 1967 was in connection with a case for some substantive offence. He added however that he was not in a position to say what

was the offence alleged to have been committed by the petitioner by a mere reference to the certified copy of the order sheet. On this evidence, there was nothing before the court to justify a conclusion in favour of the petitioner on the general issue. Only some suggestions had been made to the returning Officer in his cross-examination that he had acted mala fide and that he had acted in collusion with the successful candidate. No details with regard to the complaints leading to or the grounds for the arrests were forthcoming. We find it difficult to believe that the petitioner did not know the grounds on which he was put under arrest. The arrest immediately before the election surely hampered the campaign of the election petitioner, but by itself the arrest does not lead to the conclusion that the returning officer was trying to bring pressure upon the election petitioner not to contest the election and much less that the arrest was made in collusion with the successful candidate.

7. These being the only two points which were urged before us in the appeal, the appeal must fail and it is hereby dismissed with costs.

Appeal dismissed.