

Sheo Sadan Singh

Vs

Mohan Lal Gautam

Civil Appeal No. 1564 (NCE) of 1968

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

24.01.1969

JUDGMENT

HEDGE, J. -

1. This appeal under Section 116-A of the Representation of the People Act, 1951, arises from the decision in Election Petition No. 40 of 1967, on the file of the High Court of Judicature at Allahabad. In that petition the appellant challenged the election of the respondent to the U.P. Legislative Assembly from Iglas Constituency in the General Election held in February, 1967. In that election the appellant, the respondent and four others contested. The respondent secured 10,705 votes more than the appellant. Other candidates secured less votes than the appellant. The appellant challenged the election of the respondent on various grounds, most of which were given up either in the trial court or in this court. The High Court dismissed the election petition. Against that order the appellant has come up in appeal.

2. Before going into the merits of the appeal, it is necessary to deal with the preliminary objections, to the appeal, taken by the respondent. The first objection taken was that the petition was not maintainable as it was not properly presented. The second objection was that the petition ceased to be maintainable as a result of the dissolution of the U.P. Legislative Assembly as per the President's Proclamation of April 15, 1968, under Article 356(1) of the Constitution. That Proclamation was issued during the pendency of this election petition before the High Court.

3. The High Court rejected both those contentions, but those contentions were again pressed for acceptance at the hearing of this appeal.

4. The High Court has found as a fact that the election petition was presented to the registry by an advocate's clerk in the immediate presence of the petitioner. Therefore, in substance though not in form, it was presented by the petitioner himself. Hence the requirement of the law was fully satisfied.

5. We are unable to accept the contention of Mr. Veda Vyasa, learned Counsel for the respondent, that the petition must be held to have become infructuous in view of the dissolution of the Assembly. In this proceeding we are considering the validity of the election of the respondent and not whether he is continuing as a member. If the contention of the appellant that the respondent was guilty of corrupt practices during the election is found to be true then not only his election will be declared void, he is also liable to incur certain electoral disqualifications. The purity of elections is of utmost importance in a democratic set up. No one can be allowed to corrupt the course of an election and get away with it either by resigning his membership or because of the fortuitous

circumstance of the Assembly having been dissolved. The public are interested in seeing that those who had corrupted the course of an election are dealt with in accordance with law. That purpose will stand defeated if we accept the contention of Mr. Veda Vyasa.

6. The election petitions in this country are solely regulated by statutory provisions. Hence unless it is shown that some statutory provision directly or by necessary implication prescribed that the pending election petitioner stand abated because of the dissolution of the Assembly, the contention of the respondent cannot be accepted.

7. Section 80 provides that no election shall be called in question except by an election petition presented in accordance with the provisions of the Act. Section 81(1) says that an election petition calling in question any election may be presented on one or more of the grounds specified in sub-section (1) of Section 100 and Section 101 to the High Court, by any candidate at such election or any elector. Section 84 prescribes that a petitioner may, in addition to claiming a declaration that the election of all or any of the returned candidate is void, claim a further declaration that he himself, or any other candidate has been duly elected. Chapter III of Part VI deals with the trial of election petitions. Section 86(1) prescribes that the High Court shall dismiss an election petition which does not comply with the provisions of Section 81 or Section 82 or Section 117. Section 87(1) says that subject to the provisions of the Act and of any rules made thereunder, every election petition shall be tried by the High Court, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908, to the trial of suits. Section 97(1) provides for filing recrimination.

8. Section 98 reads :

"At the conclusion of the trial of an election petition the High Court shall make an order :

(a) dismissing the election petition; or

(b) declaring the election of all or any of the returned candidates to be void; or

(c) declaring the election of all or any of the returned candidates to be void and the petitioner or any other candidate to have been duly elected."

Section 99(1) is important for our present purpose. It says :

"At the time of making an order under Section 98 the High Court shall also make an order -

(a) where any charge is made in the petition of any corrupt practice having been committed at the election, recording -

(i) a finding whether any corrupt practice has or has not been proved to have been committed at the election and the nature of that corrupt practice; and

(ii) the names of all persons, if any, who have been proved at the trial to have been guilty of any corrupt practice and the nature of that practice"

Chapter IV of Part VI deals with withdrawal and abatement of election petitions. Section 109 stipulates that an election petition may be withdrawn only by the leave of the High Court and where an application for withdrawal is made, notice thereof fixing a date for the hearing of the application

shall be given to all other parties to the petition and shall be published in the Official Gazette.
Section 112 says :

"(1) An election petition shall abate only on the death of a sole petitioner or of the survivor of several petitioners.

(2) Where an election petition abates under sub-section (1) the High Court shall cause the fact to be published in such manner as it may deem fit.

(3) Any person who might himself have been a petitioner may, within fourteen days of such publication, apply to be substituted as petitioner and upon compliance with the conditions, if any, as to security, shall be entitled to be so substituted and to continue the proceedings upon such terms as the High Court may deem fit."

Section 116 reads :

"If before the conclusion of the trial of an election petition, the sole respondent dies or gives notice that he does not intend to oppose the petition or any of the respondents dies or gives such notice and there is no other respondent who is opposing the petition, the High Court shall cause notice of such event to be published in the Official Gazette, and thereupon any person who might have been a petitioner may, within fourteen days of such publication, apply to be substituted in place of such respondent to oppose the petition, and shall be entitled to continue the proceedings upon such terms as the High Court may think fit."

9. From the above provisions it is seen that in an election petition, the contest is really between the constituency on the one side and the person or persons complained of on the other. Once the machinery of the Act is moved by a candidate or an elector, the carriage of the case does not entirely rest with the petitioner. The reason for the elaborate provisions noticed by us earlier is to ensure to the extent possible that the persons who offend the election law are not allowed to avoid the consequences of their misdeeds.

10. The law relating to withdrawal and abatement of election petitions, is exhaustively dealt with in Chapter IV of Part VI of the Act. In deciding whether a petition has abated or not we cannot travel outside the provisions contained in that chapter. There is no provision providing for the dropping of an election petition for any reason other than those mentioned therein. The Act does not provide for the abatement of an election petition either when the returned candidate whose election is challenged resigns or when the Assembly is dissolved. As the law relating to abatements and withdrawal is exhaustively dealt with in the Act itself, no reliance can be placed on the provisions of the Civil Procedure Code nor did the learned counsel for the respondent bring to our notice any provision in the Civil Procedure Code under which the election petition can be held to have abated.

11. In support of his contention that the petition has abated great deal of reliance was placed by Mr. Veda Vyasa on the decision in *Carter and Another v. Mills* (9 Common Pleas, p. 117). Therein a pending election petition was allowed to be withdrawn on the dissolution of the Parliament. In doing so Coleridge, C.J. observed thus :

"I am of opinion that this application should be granted. The Queen having been pleased to dissolve Parliament, of which fact the Court must take judicial cognizance, a case has arisen not expressly provided for in the Act; and under these circumstances we must guide our proceedings by the old Parliamentary practice on the subject. It is common knowledge, that

according to the old practice the petition abated or dropped in such a case. We think the result is the same now, and that we therefore have authority, and ought to make an order for the return of the deposit."

Keating, J., the other judge agreed with the learned Chief Justice. We do not know the facts of that case. It is not known whether the election of the returned candidate was challenged on the ground of any corrupt practice. The decision in that case rested solely on 'the old Parliamentary practice on the subject'. We have no such practice in this country. That being so that decision is of no assistance for our present purpose. In *Ghasi Ram v. Dal Singh and Others*, (AIR 1968 SC 1191) this court proceeded on the basis that the dissolution of the Assembly does not put an end to the election petition. For the reasons already mentioned we think that the High Court was right in its conclusion that the election petition had not abated.

12. This takes us to the merits of the case. As mentioned earlier the election of the respondent was challenged on numerous grounds. On the pleadings as many as 10 issues were raised. At present we are concerned only with Issues Nos. 7, 8 and 10.

13. The only question arising under Issue No. 7 is whether Ex. 7, was got printed and published by the respondent. So far as the question of getting it prepared and printed is concerned, the evidence principally relied on is that of P.W. 16, Mohan Singh. We are in agreement with the High Court that Mohan Singh is a wholly unreliable witness. According to him, he was a signatory to that pamphlet and he took active part in getting it printed which means that he was a party to the publication of false statements. He appears to have been on the side of the respondent at one stage and walked over to the side of the appellant at a later stage, not uncommon during election time. His evidence does not carry conviction. On his own showing, he can be a stooge.

14. In support of the evidence of P.W. 16 reliance was placed on Ex. D-23, one of the vouchers submitted by the respondent along with his return of election expenses. That voucher relates to the printing of two pamphlets on behalf of the respondent. It shows that one of the pamphlet mentioned therein was printed on both sides of the paper. Ex. 7 is also printed on both sides of a paper. From that we are asked to conclude that the voucher in question refers to printing of pamphlets like Exh. 7. Such an inference would be a far fetched one. According to the respondent, D-23 relates to pamphlets similar to Ex. A-154 and A-155. The High Court has not accepted that contention. The basis on which the High Court rejected that contention does not appear to us to be correct. It is not necessary to go into that question as we are of opinion that there is no satisfactory evidence to show that any entry in Ex. D-23 relates to pamphlets similar to Ex. 7. We are also unable to attach any weight to Ex. 3, the complaint given by the appellant to the Returning Officer. The appellant has considerable experience of filling election petitions. This was the third election petition filed by him. Even as the election was going on he appears to have been preparing for the election petition. The evidence of P.W. 7, Narayan Singh Bodh throws a great deal of light on this aspect.

15. Large number of witnesses were examined to show that either respondent himself distributed pamphlets like Ex. 7 or he got them distributed through others. Their evidence has been considered by the High Court in detail and rejected. We have been taken through that evidence and we are not impressed by the same. We are satisfied that the High Court has correctly assessed that evidence.

16. Generally, this court accepts the findings of fact arrived at by the High Court. Election petitions are tried by experienced Judges of the High Court. They had the benefit of observing the witnesses when they gave evidence. Hence their appreciation of evidence is entitled to great weight. We have

not been shown any good reason for departing from that rule.

17. Now coming to Issue No. 8, which relates to the complaint of the appellant that the respondent, his agents and workers had hired several vehicles for conveyance of the voters to and from the polling stations. In petition particulars of as many as twelve vehicles which were said to have been used for conveying voters were given. But the appellant's learned Counsel confined his arguments to three vehicles only, i.e. Truck No. USK 503, Bus No. RJL 9729 and a Tractor.

18. So far as Truck No. USK 503 is concerned, the witnesses who were examined are P.Ws. 37, 40, 41, 45 and 48. Among them the most important witness is P.W. 45, Sukhbir Singh. He claims to have worked for the respondent and transported voters to the polling station in the truck in question. Further he deposed that he hired that truck from "Achaltar Truck Operators' Union", Hathras. It is now definitely established and that evidence was not challenged before us that in Hathras there was no concern bearing that name. Hence it is obvious that the evidence of this witness is wholly false. We are unable to accept the contention of Mr. Latifi, learned counsel for the appellant, that the name of concern in question was wrongly mentioned by the witness due to some confusion. The fact that P.W. 45 at one stage worked for the respondent is not of much significance. Changing sides during election is nothing unusual. Once the evidence of P.W. 45 is proved to be false very little basis remains for the evidence of other witnesses who spoke to the user of a truck in question. It is common knowledge that in the trial of election petitions there would be no death of witnesses. The factious spirit generated during election projects itself during the trial of election petition that follows. Much value cannot be attached to the complaint given by the appellant agent to the Polling Officer (Ex. 18). That document had several suspicious features which were noticed by the High Court.

19. Now coming to the tractor, its registration number was not spoken to by any witness. There is no evidence about its hiring. The witnesses who speak to its user are P.Ws. 33 and 34. The evidence of P.W. 33 is extremely vague. He deposed that a worker of the respondent Sita Ram carried the voters from the villages to the election booth. He is unable to give the details of the tractor. P.W. 34 is an omnibus witness. The evidence relating to owner of that tractor is conflicting. The evidence of P.Ws. 33 and 34 does not carry conviction. It was rightly not relied on by the High Court.

20. Now coming to the hiring of Bus RJL 9729, according to the petition that bus was owned by one Babu Lal of Jaipur. That Babu Lal has not been examined. The evidence of P.Ws. 30, 31 and 32 who speak to the conveyance of the voters in that bus to the polling station is far from satisfactory. Their evidence did not commend itself to the trial court. We agree with the High Court that it is unsafe to rely on their evidence.

21. This takes us to Issue No. 10 which relates to the complaint of the appellant that the election expenses incurred by the respondent had exceeded the prescribed limit. In this connection various items of expenses said to have been omitted in the return were particularised in the petition but most of them were not pressed at the hearing.

22. The evidence relating to the expenses said to have been incurred in procuring and hiring vehicles for conveying voters to the polling booths has to be rejected in view of our earlier findings. Large number of witnesses were examined to show that considerable quantity of wheat, atta, sugar and ghee had been purchased by the respondent for feeding his workers and the expenses incurred for that purpose had not been included in the return of expenses. Their evidence has not been believed by the trial court. We have been taken through the evidence and we do not think it is credit

worthy nor are we able to place any reliance on the document produced in that connection.

23. In the result this appeal fails and the same is dismissed with costs.

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