

Devi Prasad

Vs

Malluram Singhanian and Others

Civil Appeal No. 871 of 1968

(A.N. Grover JJ)

21.02.1969

JUDGMENT

GROVER, J. -

1. This is an appeal from a judgment of the Madhya Pradesh High Court at Jabalpur dismissing a petition filed by the defeated candidate Devi Prasad under Sections 80 and 81 of the Representation of People Act, 1951 (Act 43 of 1951), hereinafter called the "Act" challenging the election of Maluram Singhanian respondent No. 1, the successful candidate from the Birendranagar Constituency in the State of Madhya Pradesh.

2. The election was held on February 16, 1967. Out of the four respondents, respondent Nos. 3 and 4 withdrew their nomination papers and the election was contested by the appellant and the first two respondents. The result of the election was declared on February 2, 1967. The appellant got 14,465 votes. Respondent No. 1 obtained 15,811 votes and was declared elected. The election petition which was filed in April 1967 was contested by the first respondent alone, the proceedings against the other respondent being ex parte. The pleadings of the parties will be presently noticed to the extent they are relevant to the issues on which argument has taken place before us. In all nine issues were framed out of which the controversy in this Court has centred round issue Nos. 2 and 3. These issues are in the following terms :

ISSUES FINDINGS 1. 2. Whether the respondent No. 1 himself or his Decided in agent and workers with his consent published favour of statements as given in Schedule No. 1 in the respondent paper "Sanmarg" in Exts. P-19, P-20 No. 1. P. 12, P. 13 and P. 23 and are these the false statements under Section 123(4) of the Representation of People Act ? 3. (a) Whether respondent No. 1, his agents and workers with his consent made an appeal to Hindu electorates who are orthodox, innocent and illiterate to vote for him on the ground of race, community and religion and refrained them from voting for the petitioner as detailed in Schedule I and Schedule II of the Not proved. petition and in Exts. P-1, P-6, P-12, P-13, P-14, P-16, P-17, P-18, P-21, P-26, P-28, and were these statements false and amount to corrupt practices under Sections 123(3) and 123(4) of the Madhya Pradesh Act ? and if not, (b) whether the statements contained in Schedule 1 No. have materially affected the election ?"##

The High Court decided these issues in favour of respondent No. 1.

3. Before the relevant pleadings are noticed it may be mentioned that the appellant was a candidate who had been sponsored by the Congress Party. Respondent No. 1 belonged to the Ram Rajya Parishad which was a recognised political party but since its recognition was withdrawn respondent

No. 1 was allotted the symbol "Rising Sun" as an independent candidate. According to Para 6 of the petition, respondent No. 1 had set up one printing press known as Sanmarg Press. He was also the Editor, Printer and Publisher of a Hindi newspaper known as "SAPTAHIK SANMARG" published by that press. It was alleged that the printing of the newspaper was done by respondent No. 1 through his servants and employees. In Para 10 it was alleged that respondent No. 1 and his agents and workers committed, with his consent, the corrupt practice of publication of statement of facts which were false and which were believed to be false and were not believed to be true in relation to the personal character and conduct of the appellant. These statements were contained in the paper Sanmarg and in the election bulletins set out in Schedule I annexed to the petition. In Para 11 it was stated that respondent No. 1 and his agents and workers, with his consent, made systematic appeals to the Hindu electors to vote for him on grounds of race, community, religion and to refrain from voting for the appellant on the alleged ground that the latter cow-slaughter which was sinful according to Hindu religion. According to the appellant the constituency consists of villages inhabited by persons who are generally illiterate and who are very orthodox in their views. They worship cow as god and consider the killing of a cow a highly sinful act. The statements which were false and mischievous, according to the appellant, were contained in the documents in Schedules 1 and 2 annexed to the petition. In his written statement respondent No. 1 asserted that the aforesaid corrupt practices had not been committed by him or by his agents and workers with his consent. According to respondent No. 1 he had severed all connections with the Sanmarg Printing Press and with the newspaper "SAPTAHIK SANMARG". The ownership of the press had been transferred on December 2, 1966 to Bajrang Lal Aggarwal who had filed the requisite declaration before the Sub-Divisional Magistrate, Raipur. A declaration dated November 4, 1966 had also been filed before the Additional District Magistrate to the effect that the answering respondent had severed all connections with the said newspaper. It was only by mistake that his name continued to be shown as Chief Editor after November 4, 1966 on the newspaper. The allegation relating to the appeal to Hindu electors to vote or refrain from voting on grounds of race, community or religion was denied. Respondent No. 1 even denied that the villagers were orthodox in religion and worshipped cow as a god. The respondent emphatically denied that any such publication or bulletins had been issued or published by him or his workers and agents with his consent as alleged in the petition.

4. The High Court took up each one of the pamphlets and bulletins contained in Schedule 1 by which, according to the appellant, respondent No. 1 had sought to, make false statement of facts relating to his personal character or conduct and found that their publication could not be attributed to respondent No. 1. The question whether respondent No. 1 continued to be the owner of Sanmarg Press and whether he was the Chief Editor of the newspaper during the election period was also fully considered. The High Court proceeded on the basis that the Sanmarg Press had been sold and transferred by respondent No. 1 as pleaded by him but he continued to be the Chief Editor of the newspaper. The High Court dealt with the pamphlet (Ex. P-20) on which a good deal of argument has been addressed before us. This pamphlet contained certain allegations about embezzlement by the appellant of an amount of Rs. 5,000/- belonging to a co-operative society. The High Court found, inter alia, (i) there was no evidence to show when the pamphlet (Ex. P-20) was published and by whom. (ii) No manuscript had been called for although Bajrang Lal Aggarwal R.W. 3 had deposed in his statement that he maintained a record of the pamphlets published in his press. (iii) No shareholder of the co-operative society had been produced to prove that the version of the appellant was correct. (iv) The contents of the pamphlet had also not been proved. It is unnecessary to refer to other pamphlets contained in Schedule 1 which were relevant for the purpose of deciding issue No. 2 because Mr. Gupte has not addressed any argument on any other pamphlet with the exception of Ex. 20. The issue as stated before, was decided in favour of respondent No. 1 on the ground that the

appellant had not been able to prove that the alleged false statements had been made by respondent No. 1 or his agents and workers with his consent. On issue No. 3 all that need be mentioned about the decision of the High Court is the finding relating to the handbill (Ex. 35) which bears the name of Sanmarg Press and which had been issued under the name of Swami Karpatriji. The heading of this handbill is "Do not cast your votes in favour of murderers and thereby become a party to the evil". It is with regard to this handbill that Mr. Gupte addressed us. This is what the High Court says about this pamphlet :

"This pamphlet also suffers from the same infirmities and comments as aforesaid. There is no evidence to show that Swami Karpatriji was publisher of this pamphlet. There is further no evidence to show that he was the agent of the respondent No. 1. No evidence has been led to prove that this pamphlet was published either with the consent of respondent No. 1 or his election agent. The contents of this pamphlet also have not been proved."

5. The main question which has to be decided is whether the publications on which Mr. Gupte has based his submission before us were printed at the Sanmarg Press and whether respondent No. 1 was the owner of that Press and the publication and printing was done with his knowledge and consent. On behalf of the appellant it has been pointed out that the two pamphlets or handbills Ex. P-20 and Ex. 35 bear the name of Sanmarg Press from which it is obvious that they were printed there. In his statement as R.W. 1, Respondent No. 1 denied that the pamphlets had either been printed or published or distributed by him. He, however, admitted that he had got some of his own posters printed at Sanmarg Press. But respondent No. 1 maintained that he had sold the Sanmarg Press to Bajrang Lal on December 2, 1966 for Rs. 6,500/- by means of a sale deed. He had filed a declaration before the Additional District Magistrate to that effect. Bajranglal also filed a similar, declaration. He further stated that the Press which had been installed originally in his house continued to remain there even after its sale to Bajrang Lal who took one room on rent from him. A rent deed had been executed on December 2, 1966 by Bajrang Lal in his favour. As regards "SAPTAHIK SANMARG" newspaper, respondent No. 1 stated that the last issue was published in March 1967. According to respondent No. 1 he was no longer editing the newspaper nor did he have any control over it. The explanation which respondent No. 1 gave for his name having been shown as the Chief Editor was that it was published wrongly as he had given a declaration in November 1966 that he had ceased to be the Chief Editor. In cross-examination respondent No. 1 stated that he was unable to say whether all the pamphlets had been printed in Sanmarg Press. He had called Bajrang Lal who was his brother-in-law as his witness but had not asked him to bring any records to show as to what pamphlets were printed in his Press. He denied having met Bajrang Lal during the election days. Bajrang Lal appeared as R.W. 3. He deposed that Sanmarg Press had been sold to him by respondent No. 1 on December, 1, 1966 and he filed a declaration under the Press and Registration of, Books Act, 1867 on the following day before the Sub-Divisional Magistrate, Raipur. He further stated that although he had taken the Press for his business his cousin Shambu Dayal Singh started looking after it. The "SAPTAHIK SANMARG" newspaper was printed in his press on behalf of Dharam Singh. As his cousin was looking after the press he did not know what pamphlets and posters were being printed there and who got them published. On July 1, 1967 he sold the press to Jai Narain Srivastava of Rajnandangaon for Rs. 7,000/-, The following part of his statement in his cross-examination may be reproduced :

"I was informed by my cousin brother that whosoever gets any pamphlet or poster

published one of, its copy was sent to the District Magistrate. I did, not ask him that if the customer is not known to the authorities of the Press whether two persons are required to identify him.

I do not know whether respondent No. 1 got any pamphlet published from Sanmarg Press. Respondent No. 1 met me one day on the road either in the month of July or August and he made an enquiry regarding the publication of pamphlets and I told him that after seeking the manuscript I will let him know, but afterwards I remained busy in my work and nothing happened. I told him that the manuscript file is at my house, but I did not show him. My village is at a distance of 24 miles from Raipur. I did not ask him to come to my house and to see my file. I have not seen the manuscript. I cannot say whether there is any signature of Maluram Singhanian on any of the manuscripts. I did not care to see the bill or the receipts which I have destroyed. The press was doing other miscellaneous work which was entrusted to it. When Respondent I met me on the road, by that time the press had already closed working."

6. The contention of Mr. Gupte is that the entire story about the sale of the Press to Bajrang Lal was;false and had not been substantiated. It is pointed out that the Press admittedly was acquired by respondent No. 1 only some months before the elections were to take place. He purported to transfer it to Bajranglal in December 1966 because by that time he knew that he would be making use of the Press for all kinds of publications which might bring him within the mischief of the provisions of the Act. He therefore, thought of ostensibly transferring the Press to Bajrang Lal who was his brother-in-law. A great deal of emphasis has been laid on Bajrang Lal having disclaimed any active connection with the working of the Press after he had acquired it as on his own statement it was Shambu Dayal Singh, his cousin, who started managing the Press. The other facts which, according to Mr. Gupte, conclusively establish the fictitious nature of the transfer or sale of the Press, inter alia, are that no sale deed was produced nor were the books of account produced either by respondent No. 1 or by Bjrang Lal and that respondent No. 1 continued to be shown as the Chief Editor of the newspaper which was also being published by the Sanmarg Press. An application had been filed on behalf of the appellant on December 12, 1967 before the High Court asking for the production of account books and documents including the manuscript relating to the impugned handbills. In reply to that application respondent No. 1 stated that the Press had been transferred to Bajrang Lal on December 2, 1966 and therefore he was not in possession of any account books relating to the same. Respondent No. 1 was a money-lender and he only maintained a loan account of his debtors as required under the C.P. Money-Lenders Act. He did not do any business nor did he have any account books relating to cultivation of lands. As regards the account books of Bajrang Lal, it was stated that they were not in possession of respondent No. 1 and he did not know whether the former maintained any books of account. An objection was also taken that the application of the appellant under Order XI, Rule 12, of the Civil Procedure Code was highly belated. The High Court disposed of the appellant's application by an order dated December 15, 1967. According to this order the Court had made a direction on July 24, 1967 that in case the parties wanted to avail and make use of the provisions of Order XI, Rule 12, C.P.C., they should take suitable steps but this had not been done.

7. Now the appellant had filed an application on December 12, 1967 when his evidence was to start on the following day. Actually his evidence concluded on December 15, 1967. The Court gave two reasons for dismissing the appellant's application. The first was that the application was highly belated and the second was that according to respondent No. 1 all the documents required by the

appellant were neither in his possession nor in his power. This is what the learned judge said :

"Shri Pandey has not been able to tell me under what provision of law Bajranglal, a witness of respondent No. 1, can be asked to bring those papers and I do not think myself that this is possible."

Mr. Gupte says that it was for respondent No. 1 to have produced all the relevant documents including his books of account in order to sustain his plea that he had transferred the Press to Bajrang Lal and after the application under Order XI, Rule 12, had been made by the appellant, the respondent when he appeared as his own witness, should have produced the required books of account. As it had been argued before us that the High Court was in error in considering that there was no provision of law under which Bajrang Lal, a witness of respondent No. 1, could be required to bring the account books manuscript etc. we made an order on January 6, 1969 containing a direction to Bajrang Lal to produce the account books and to be present in Court at the next date of hearing of the appeal. Bajrang Lal has appeared before us and has produced his account books in which all the relevant entries relating to the transfer of the Press are to be found; but without admitting any additional evidence we are satisfied from the statements of respondent No. 1 and Bajrang Lal coupled with the declaration (Ex. D-2) made by Bajrang Lal before the Sub-Divisional Magistrate, Raipur that respondent No. 1 had sold the Press to him in the beginning of December 1966. A reference at this stage may be briefly made to the relevant provisions of The Press and Registration of Books Act, 1867. The word "book" according to Section 1 includes a pamphlet. "Newspaper" means any printed periodical work containing public news or comments on public news and "paper" means any document, including a newspaper, other than a book. Section 3 provides that every book or paper shall have printed legibly on it the name of the printer and the place of printing and if the book or paper be published the name of the publisher and the place of publication. Under Section 4 no person shall keep in his possession any press for printing of books or papers who shall not have made and subscribed the prescribed declaration before the District, Presidency or Sub-Divisional Magistrate within whose local jurisdiction such press is kept. As regards the newspaper, under Section 5, the names of the owner and editor have to be printed clearly on each copy. The printer and publisher have to make the prescribed declaration. Under sub-section (2) of Section 5 as soon as the ownership of the newspaper is changed a new declaration has to be made. Under Section 8 a new declaration has to be made by the persons who have signed a declaration and subsequently ceased to be printers and publishers of a newspaper. Section 8-A enables a person whose name has been incorrectly published as editor to make a declaration to that effect before a Magistrate. Section 13 provides punishment for a person who keeps in his possession any press in contravention of the provisions of the aforesaid Act. Section 14 deals with punishment for making a false declaration. It is thus clear that Bajrang Lal was running a substantial risk in making a declaration that he was the owner of the Press if later on it was found that his declaration was false. As regards the non-production of the books of account by respondent No. 1 it has not been proved that he was maintaining such books in which entries about the transfer of the Press would have been made. On his own statement which has not been controverted he was maintaining books only with regard to his money-lending business. The fact that respondent No. 1 continued to function as the Chief Editor of the newspaper "SAPTAHIK SANMARG" would barely be sufficient to establish that he was the owner of the Press as well after December 2, 1966.

8. Once it is found that respondent No. 1 was not the owner of the Sanmarg Press the task of the appellant to establish that the impugned pamphlet and the handbill were published by him or with his consent and knowledge at the Sanmarg Press becomes fairly difficult. But Mr. Gupte has contended strenuously that the association of respondent No. 1 with the Sanmarg Press was very

close as Bajrang Lal happened to be his brother-in-law and the newspaper of which respondent No. 1 was the Chief Editor was being admittedly published there. The pamphlet and the handbill also bore the name of the Sanmarg Press as the Press at which the printing had been done. It is pointed out that if the case of respondent No. 1 was that these publications had not been printed at the Sanmarg Press and some one had got them printed by some other Press but had deliberately and intentionally got the name of Sanmarg Press printed for ulterior motives such a case should have been made out on behalf of respondent No. 1 before the High Court. He has also sought to refer to the evidence relating to distribution of these pamphlets. Much stress has been laid on the fact that the statements contained in the impugned publications were meant to promote the chances of election in favour of respondent No. 1. From all these it has been argued that the printing of the impugned publications was done at the Sanmarg Press from which it must be inferred that respondent No. 1 was fully aware of them and had given his consent to their publication and subsequent distribution. We are unable to agree that even on the assumption that the impugned publications bore the name of Sanmarg Press, respondent No. 1 can be held to be responsible for the same. For the reasons given by the High Court we concur in its view that the pamphlet Ex. P-20 and the handbill Ex. 35 have not been proved by the appellant to have been published by respondent No. 1 himself or by big agents and workers with his consent. The evidence relating to distribution is also not satisfactory nor is it sufficient to show that the distribution had been done at the instance of respondent No. 1. It must be remembered that the proceedings involving proof of corrupt practices are of a quasi-criminal nature and it was for the appellant to prove beyond doubt all the necessary facts which would establish the commission of the corrupt practices that have been alleged in the election petition.

9. It may be mentioned that under the provisions of Section 127 of the Act no person shall print or cause to be printed any election pamphlet or poster unless a declaration as to the identity of the publisher signed by him and attested by two persons is delivered by him to the printer in duplicate and unless within a reasonable time after the printing of the document one copy of the declaration is sent by the printer together with one copy of the document to the Chief Electoral Officer where the printing has been done in the capital of the State or to the District Magistrate of the district in which it is printed. At the suggestion of counsel we directed in our previous order dated January 6, 1969 that the Collector of Raipur be summoned and asked to produce before us the file containing the copies of handbills or pamphlets printed at the Sanmarg Press between December 1, 1966 and February 16, 1967. That file has been duly produced before us and it does not contain the copies of the pamphlet Ex. P-20 or the handbill Ex. 35. Nothing such may turn on the absence of these copies but since the file had been sent for and has been produced before us we have considered it necessary to mention this matter.

No other point having been raised before us this appeal fails and it is dismissed with costs. The travelling and other incidental expenses of the Deputy Collector and Bajranglal may be deducted out of the security for costs deposited by the appellant in this Court.

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