

H. V. Kamath

Vs

Ch. Nitiraj Singh

Civil Appeal No. 1517 of 1968

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

24.02.1969

JUDGMENT

BACHAWAT, J. -

1. This appeal is directed against the judgment of a single Judge of the High Court of Madhya Pradesh dismissing an election petition for setting aside the election of the respondent Chaudhury Nitiraj Singh to the Hoshangabad Parliamentary Constituency No. 27. The appellant was the Praja Socialist Party candidate with the election symbol "hut". The respondent was the Congress Party candidate with the election symbol. "Two bullocks with yoke on". The voting took place on February 20, 1967. The votes were counted on February 21 and February 22, 1967. The respondent having got a majority of about 20,000 votes was declared duly elected. The petition charged the respondent with several corrupt practices. The appellant now presses before us only the charge under Paragraph 5(i), (ii), (iii) and (iv), Paragraph 5 (v), Paragraph 6 and Paragraph 7 (ii).

2. At the time of the election, the Congress Party, was in power and the Chief Minister Shri D. P. Mishra belonged to the Congress Party. In November, 1966, the respondent was nominated by the Congress Party as its candidate for the Hoshangabad Parliamentary Constituency. The substance of the charge as made in Paragraph 5(i), (ii) (iii) and (iv) and as pressed before us is that on December 23, 1966, the Government of Madhya Pradesh headed by Shri D. P. Mishra, promulgated an Ordinance No. 19 of 1966, exempting agriculturists holding land less than 7.50 acres or paying land revenue not exceeding Rs. 5/- from payment of land revenue, that Shri D. P. Mishra as the agent of the respondent and with his consent made speeches at Narsinghpur and Piparia on February 16, 1967, announcing the benefit of such exemption and that the respondent thus committed the corrupt practice under Section 123(1)(A) of the Representation of the People Act, 1951. The evidence shows that the question of exemption of uneconomic holding from payment of land revenue was being agitated for some time past. Towards the close of 1966 a resolution was moved by the members of the opposition parties in the Madhya Pradesh Vidhan Sabha urging such exemption. But no Bill to that effect was then passed. The Government reconsidered the matter and when the Vidhan Sabha was not in session it passed Ordinance No. 19 of 1966, granting the exemption. The Ordinance was later replaced by Act No. 6 of 1967, which was published on April 26, 1967. The exemption was advocated by the Praja Socialist Party also and was welcomed by all parties. Nevertheless on the eve of the election the opposition parties started a campaign stating that the object of the exemption was to forfeit the land to the State and raised the slogan "Lagan Maaf Zamin Saaf". The propaganda was refuted by the Congress Party. In an election speech on February 16, 1957, Shri D. P. Mishra raised the slogan "Lagan Maaf Sab Party Saaf". His object was to tell the voters that the exemption should be granted and that the opposition parties should be routed in the election. It also appears that one Shri S. K. Dixit a member of the Congress Party published a

pamphlet, Ex. P-2, on or about February 7, 1967, refuting the false propaganda that the exemption was temporary and was granted with a view to forfeit the lands and urging the electors to vote for the Congress. On the materials on the record it is impossible to hold that the respondent committed the corrupt practice under Section 123(1)(A). The Ordinance was passed by the Government of Madhya Pradesh. As a result of the Ordinance a large number of agriculturists got exemption from land revenue. Such an exemption does not amount to a gift, offer or promise of any gratification within the meaning of Section 123(1) (A). Nor is it possible to say that the Government was the agent of the respondent. It is true that the Congress Party was then in power. But the exemption was not given by the Congress Party. It was given by the Ordinance which was passed by the Government. Nor does the announcement of the declaration at the meeting held on February 16, 1967, or by the pamphlet, Ex. P-2, carry the matter any further. On the materials on the record it is not possible to say that either Shri D. P. Mishra or Shri S. K. Dixit acted as the agent of the respondent. The charge under Paragraph 5(i), (ii), (iii) and (iv) is not established. Some additional embellishment of the charge were dealt with by the learned Judge and they were not pressed before us.

3. The substance of the charge as laid in Paragraph 5(v) and as pressed before us is that on the eve of the election the Government of Madhya Pradesh headed by Shri D. P. Mishra declared that Class III and Class IV Government employees would get increased dearness allowance from April 1, 1967, according to the rates sanctioned for Central Government employees, that Shri D. P. Mishra with the consent of the respondent and as his agent announced the grant of these benefits at the meetings held on February 16, 1967, at Narsinghpur and Piparia and that the respondent thus committed the corrupt practice under Section 123(1)(A). It appears that Class III and Class IV employees gave a notice to the Government stating that they would go on strike with effect from February 13, 1967. Without their co-operation the entire election would have been at a standstill. The Government thought that the demand of the employees for increased dearness allowance was legitimate and therefore announced on or about February 11, 1967, its decision to grant the increased dearness allowance with effect from April 1, 1967. The grant of the increased dearness allowance cannot be regarded as a gift, offer or promise of any gratification within the meaning of Section 123(1)(A) nor is it possible to say that the Government or Shri D. P. Mishra was the agent of the respondent. The announcement of the grant of the increased dearness allowance at the meeting held on February 16, 1967, does not carry the matter any further. The charge under Paragraph 5(v) is not established.

4. The charge under Paragraph 6 is that the respondent or his agent distributed dummy ballot papers with the respondent's name and his election symbol of "Two bullocks with yoke on" and, also the appellant's name without his election symbol printed thereon, that those papers conveyed to the voters the impression that the appellant had withdrawn his candidature, that the appellant and his agents on the eve of the election told the voter that the appellant had withdrawn his candidature and that the respondent thereby committed the corrupt practice under Section 123(4). The evidence shows that dummy ballot papers as mentioned above were printed and distributed on behalf of the respondent. Such dummy ballot papers were in contravention of the instructions issued by the Election Commission of India. The appellant's name should not have been printed in them. But it is impossible to say that the dummy ballot papers conveyed to the voters the impression that the appellant had withdrawn his candidature. On this issue the appellant examined P.W. 6, P.W. 7, P.W. 10, P.W. 23, P.W. 25, P.W. 27, P.W. 29, P.W. 30, P.W. 31 and P.W. 32 and the respondent examined R.W. 2, R.W. 3, R.W. 11 and R.W. 13. In agreement with the learned Judge we do not accept the statement of the appellant's witnesses that on the eve of the election the respondent and his agents informed the voters that the appellant had withdrawn his candidature. The voters knew that there

were two candidates in the field, viz., the appellant and the respondent. Even on February 16, 1967, Shri D. P. Mishra stated that the appellant was contesting the election. The respondent carried on a vigorous election propaganda until February 18, 1967. If the respondent or his agent had informed the voters that the appellant had withdrawn his candidature it was not likely that such intensive propaganda would be carried on until that date. The charge under Paragraph 6 is therefore not established.

5. The charge under Paragraph 7(ii) was that Chaudhary Diwan Singh, the Station House Officer at Sohagpur, and a member of the police force in the service of the Government, with the consent of the respondent actively canvassed for the respondent and that the respondent thereby committed corrupt practice under Section 23(7). To prove this charge the appellant examined P.W. 3, P.W. 4 and P.W. 9. Chaudhary Diwan Singh and the respondent denied the charge. For the reasons given by the learned Judge, it is impossible to accept the testimony of P.W. 3, P.W. 4 and P.W. 9. Their evidence does not ring true. P.W. 3 never spoke to anybody that he was asked by Chaudhary Diwan Singh to vote for the respondent. It is not likely that Diwan Singh would approach P.W. 4. It is impossible to believe that P.W. 9 could overhear a conversation between Diwan Singh and the respondent when the respondent is said to have asked Diwan Singh to canvass for him. The charge under Paragraph 7(ii) is also not established.

In the result, the appeal is dismissed with costs.

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