

Ram Dayal

Vs

Brijraj Singh and Others

Civil Appeal No. 1526 of 1968

(J. C. Shah, G. K. Mitter JJ)

30.04.1969

JUDGMENT

SHAH, J. -

1. At the general elections held in February, 1967, Brijraj Singh (first respondent in this appeal) was declared elected to a seat in the Madhya Pradesh Legislative Assembly from the Sabalgarh Constituency defeating his rival candidate Raja Pancham Singh by 1706 votes. The appellant Ram Dayal who is a voter in the constituency moved an election petition in the High Court of Madhya Pradesh for an order setting aside the election on two grounds :

(1) that the nomination paper of one Dhani Ram was illegally rejected by the Returning Officer; and

(2) that Brijraj Singh and his agents committed several corrupt practices in relation to the election.

A third ground that Dataram (third respondent in this appeal) when his nomination was accepted was below the age of 25 and was on that account incompetent to stand for election, was sought to be set up by an application for amendment of the election petition. The application was disallowed by the High Court. The High Court held that an application for amendment which sought to set up a new ground made after the expiry of the period prescribed for filing an election petition cannot be entertained. On a consideration of the evidence the High Court rejected the other grounds, and dismissed the petition. The appellant has appealed to this Court.

2. An election petition has, under Section 18(1) of the Representation of the People Act, 1951, to be filed within 45 days of the date of the publication of the result of the election. An application for setting aside the election, that Dataram was below the age of 25 and on that account the election was liable to be set aside under Section 100(1)(d)(i) of the Act made on August 15, 1967, would plainly have been barred, and by amendment the ground could not be permitted to be added. This Court in *Harish Chandra Bajpai v. Triloki Singh* ((1957) SCR 370), held that the Election Tribunal has power to allow an amendment in respect of particulars of illegal and corrupt practices, or to permit new instances to be included, provided the grounds or charges are specifically stated in the petition, but its power to permit amendment of a petition under Order VI, Rule 17 of the Code of Civil Procedure will not be exercised so as to allow new grounds or charges to be raised or the character of the petition to be so altered as to make it in substance a new petition, if a fresh petition on those allegations would on the date of the proposed amendment be barred. By the amendment a new ground for setting aside the election was sought to be introduced, and the High Court was right in

rejecting the application for amendment.

3. The plea that the rejection of the nomination paper of Dhani Ram by the Returning Officer was illegal has no substance. On January 19, 1967, Dhani Ram delivered to the Returning Officer two nomination papers signed by him. Each nomination paper bore a thumb-impression of one Gokla as the proposer. But the thumb-impressions were not authenticated or attested in the presence of the Returning Officer or any other officer specified in the Rules. The Returning Officer rejected the nomination papers.

4. Section 33(1) of the Representation of the People Act, 1951, requires that each candidate shall deliver to the Returning Officer a nomination paper completed in the prescribed form and signed by the candidate and by an elector of the constituency as proposer. The expression "sign" is defined in Section 2(i) of the Act as amended by Act 27 of 1956 as meaning "in relation to a person who is unable to write his name authenticated in such manner as may be prescribed". Rule 2(2) of the Conduct of Election Rules, 1961, provides :

"For the purposes of the Act or these rules, a person who is unable to write his name shall, unless otherwise expressly provided in these rules, be deemed to have signed an instrument or other paper if -

(a) he has placed a mark on such instrument or other paper in the presence of the Returning Officer or the Presiding Officer or such other officer as may be specified in this behalf by the Election Commission.

(b) such officer on being satisfied as to his identity has attested the mark as being the mark of that person."

Where a person is unable to write his name, he may place his mark on the instrument or other paper and the requirements of law are complied with provided he puts the mark in the presence of the Returning Officer or the Presiding Officer or such other officer as may be specified in that behalf by the Election Commission and such officer on being satisfied as to his identity attests the mark as being the mark of that person. Gokla was illiterate. He impressed his thumb mark on the nomination paper, but it was not placed in the presence of any of the designated officers, nor was there any authentication or attestation of the thumb mark. The requirement under Section 33(1) of the Act that the nomination shall be signed by the candidate and by the proposer is mandatory. Signing, whenever signature is necessary, must be in the strict accordance with the requirements of the Act and where the signature cannot be written it must be authorised in the manner prescribed by the Rules. Attestation is not a mere technical or unsubstantial requirement within the meaning of Section 36(4) of the Act and cannot be dispensed with. The attestation and the satisfaction must exist at the stage of presentation and omission of such an essential feature may not be subsequently validated at the stage of scrutiny any more than the omission of a candidate to sign at all could have been. *Rattan Anmol Singh and Another v. Atma Ram and Others* ((1955) 1 SCR 481). The nomination papers of Dhani Ram were filed on the last day fixed for receiving the nomination papers. Not being attested as required by law on the date of filing, the defect could not be rectified at the time of scrutiny, Evidence of witnesses for the appellant who deposed that at the date of scrutiny, Gokla was present outside the office of the Returning Officer and that Dhani Ram brought to the notice of the Returning Officer that Gokla was present and that his signature may be attested, and that the Returning Officer declined to accede to the request need not be considered. The Returning Officer could not allow Dhani Ram or his proposer to rectify the defect in the nomination

papers after the last date of nomination.

5. Several corrupt practices were set up in the petition. The corrupt practices relied upon by the appellant in this appeal may be broadly classified under three heads :

"(1) that on January 19, 1967, Brijraj Singh paid Rs. 250/- to Sone Ram respondent No. 5 at Morena and successfully persuaded him not to file his nomination paper.

(2) that Brijraj Singh and his agents toured the constituency in a jeep fitted with a microphone and visited many villages and delivered speeches reflecting upon the character and conduct of Raja Pancham Singh, a candidate sponsored by the Congress Party. One Chhoteylal respondent No. 4 was made to contest the election by Brijraj Singh to "divide the votes of Raja Pancham Singh" and that Chhotey Lal who supported the candidature of Brijraj Singh made statements between January 20, 1967 and February 19, 1967 and distributed leaflets containing statements of fact relating to the personal character and conduct of Raja Pancham Singh which were false to the knowledge of Chhotey Lal and or did not believe them to be true, and that the leaflets were issued and circulated with the consent of Brijraj Singh, and

(3) that the Maharaja Scindia of Gwalior accompanied by Brijraj Singh visited several villages in a helicopter and addressed election meetings in support of the candidature of Brijraj Singh and the Maharaja acted as his agent and incurred expenditure for carrying on election propaganda; if the expenditure incurred for the purpose of obtaining the use of the helicopter and a fleet of motor cars used by him were taken into account, such expenses being incurred or authorised by Brijraj Singh would considerably exceed the limit prescribed by the statute.

6. In the view of the High Court Chhotey Lal did commit a corrupt practice in that he distributed on January 29, 1967, at Kelaras Village leaflets containing statements of fact relating to the personal conduct of Raja Pancham Singh but it was not proved that Chhotey Lal contested the election at the instance of Brijraj Singh "to divide the votes of Raja Pancham Singh" or that he was the agent at any time of Brijraj Singh, nor was it proved that Chhotey Lal supported the candidature of Brijraj Singh or that any pamphlet of the nature circulated by Chhotey Lal was issued or circulated by Brijraj Singh. In that view the High Court held that the election of Brijraj Singh was not materially affected by the candidature of Chhotey Lal. The High Court rejected the contention of the appellant that Brijraj Singh committed other corrupt practices as alleged. The High Court accordingly passed an order declaring that the appellant had failed to establish that Brijraj Singh had committed any corrupt practice with which he was charged. The High Court dismissed the election petition filed by the appellant with costs, but declared that the 4th respondent Chhotey Lal was guilty of the corrupt practice within the meaning of Section 123(4) of the Act and was on that account disqualified for a period of six years from the date of the order under Section 8-A of the Act. against that order this appeal has been preferred by the appellant.

7. Chhotey Lal has not appealed against the order recorded against him. He is impleaded as a party-respondent and he has appeared before this Court through counsel. At the hearing counsel appearing for Chhotey Lal urged that the finding of the High Court that Chhotey Lal was guilty of the corrupt practice charged against him is contrary to evidence. But in the absence of an appeal filed by Chhotey Lal the ground cannot be permitted to be agitated by him. The appeal was filed by the appellant challenging the order of the High Court refusing to set aside the election of Brijraj Singh

on the three grounds set out hereinbefore. The scope of the appeal cannot be expanded by permitting Chhotey Lal who could have, but has not chosen to appeal, to plead that he has not committed any acts amounting to a corrupt practice.

8. The case that Brijraj Singh gave Rs. 250/- to Sone Ram and induced him to withdraw his candidature is unreliable. One Shanker Lal deposed that on January 19, 1967, he met Brijraj Singh and Sone Ram in the compound of the office of the Collector, Morena, and the former induced Sone Ram not to contest the election and offered to pay a bribe of "Rs. 250/-, and paid Rs. 250/- to Sone Ram. According to the witness there were several persons present at the time when the bribe was offered and paid, but none of those persons was called as a witness on behalf of the appellant. One Tikaram who was alleged to be present was examined on behalf of Brijraj Singh and he denied that any such offer was made or bribe paid. Sone Ram also denied that he had received any bribe from Brijraj Singh. He stated that he had borrowed Rs. 200/- from his maternal uncle to deposit the amount for his candidature but since his maternal uncle declined to incur any further expenditure and dissuaded him from contesting the election he had to abandon his candidature. In the opinion of the Trial Judge the witness Shanker Lal was an untruthful witness and we see no reason to disagree with that view.

9. We may now turn to the plea that Brijraj Singh made false allegations against the personal conduct and character of Raja Pancham Singh orally and by circulating pamphlets, on which a great deal of argument was advanced before us. It was the case of the appellant that Brijraj Singh and his two workers Laxmichand and Shankarlal visited several villages between February 2, 1967 and February 26, 1967, in connection with the election campaign and made false statements against the character and conduct of Pancham Singh in the meetings held in those villages, and "in door to door canvassing" in those villages. Those allegations are denied by Brijraj Singh and by Laxmichand and Shankarlal. The case of the appellant was that these allegations were made in the course of the election propaganda in ten villages, but evidence was led in respect of statements made in six villages. It is said that Brijraj Singh and his supporters visited the village Narhela and held a meeting in that village. One Dhani Ram stated that a meeting was held at the village Narhela, but the witness did not say that either Brijraj Singh or his workers made any allegations against the personal character of Pancham Singh. According to this witness Brijraj Singh merely requested the persons assembled there in the meeting to vote for him. Witness Ghansu stated that a meeting was held at the village Narhela and the same was addressed by Brijraj Singh and Laxmichand and that these two persons stated that Pancham Singh was "associating with dacoits" and had misappropriated money belonging to a school and had got the school closed and that whenever any member of the legislative assembly sought to visit him "he set his dogs" at him. In the election petition there was no reference to any meeting held at Narhela or of any offending statements made at any such meeting. It was stated in Paragraph III(a) of the election petition, in setting out the details of the corrupt practices, that the first respondent accompanied by Laxmichand and Shankarlal toured in a jeep fitted with a microphone and visited the village Narhela on February 2, 1967, and canvassed votes going from door to door. The witness Ghansu did not belong to Narhela, and no witness from village Narhela was examined. Laxmichand, Shankarlal and Brijraj Singh denied that any statement against the personal conduct and character of Pancham Singh was made by them at Narhela either in any meeting or in "door to door canvassing". Phool Singh - the only witness examined on behalf of the appellant - did not support his case that Brijraj Singh had made any statements derogatory of Pancham Singh at Budhreta. About the village Khirla, witness Keshar Singh stated that Brijraj Singh and Laxmichand had held meetings and had made statements against the personal conduct and character of Pancham Singh. But the witness did not belong to the village Khirla; he is a resident of Pahadgarh village which is at a distance of fifteen miles from Khirla. No

witness from Khirla was examined. Witness Dataram said that at a meeting held at Sujarma, Brijraj Singh and his agents made "statements derogatory of Pancham Singh". But the testimony of the witness who is said to be constantly under "police surveillance" is unreliable. About the meeting held at village Kelaras the appellant examined three witnesses - Narayan, Kanhaiyalal and SardarSingh. The first two witnesses said nothing about any statement made about the personal character of Raja Pancham Singh at the meeting. Sardarsingh supported the case of the appellant, but the testimony of the witness was inconsistent with the case of the appellant. About the meeting held at village Kulouli the appellant examined witness Badri who stated that both Brijraj Singh and Laxmichand had made statements derogatory of Pancham Singh. His explanation about his presence at the village Kulouli was apparently untrue and his testimony was otherwise unreliable.

10. The learned Judge summarised the evidence of the witnesses on behalf of the appellant and concluded that the appellant had "miserably failed" to establish that Brijraj Singh and his agents Laxmichand and Shankar Lal had made any statements derogatory to the personal character of Pancham Singh. In the view of the learned Judge it was not proved that Brijraj Singh and his two agents had made statements that Pancham Singh was an associate of dacoits, nor was the statement that Pancham Singh had misappropriated the funds of the school proved. The learned Judge also held that the statement alleged to have been made by Brijraj Singh and his agents that Pancham Singh was responsible for getting the school at Pahadgarh closed and that "he lets loose ferocious dogs towards the persons who go to see him" were trivial and did not involve any moral turpitude, and even assuming that those statements were made, no corrupt practice could be said to have been committed on that account under Section 123(4) of the Act.

11. The learned Trial Judge found that Chhotey Lal committed a corrupt practice by distributing pamphlets casting reflections upon the personal character of Pancham Singh. But in the view of the learned Trial Judge there was no reliable evidence to prove that Chhotey Lal acted on behalf of Brijraj Singh or that the latter defrayed the expenses of the pamphlets or that the agents of Brijraj Singh distributed the offending pamphlets. The learned Judge has carefully considered the evidence and no serious argument has been advanced before us on that part of the case which may justify us in taking a different view. Not a word was said that the expenses incurred by Chhotey Lal for getting the pamphlets printed were reimbursed, nor was the evidence of the witnesses Sanwaldas Gupta, Kalyansingh Tyagi examined on behalf of the appellant that Brijraj Singh and his agents circulated the pamphlets true. The learned Judge observed that the story that out of the 2,500 copies of the pamphlets printed, 2,000 copies of the pamphlets had been handed over by Chhotey Lal to Brijraj Singh on the night of January 19, 1967, was "a clumsy and crude invention of these two witnesses", and "was utterly false and unreliable". After considering the various improbabilities and the discrepancies relating to the testimony of the witnesses Sanwaldas Gupta and Kalyansingh Tyagi, the learned Judge observed that these witnesses "invented lies" and did "their best to introduce clumsy and crude improvements at the stage of evidence" with the "object of bolstering up" the appellant's case and through him that of Raja Pancham Singh. In his view the story that the pamphlet Annexure 'A' was issued or circulated with the consent of Brijraj Singh was false. The learned Judge also found on a consideration of the evidence that at no stage did Chhotey Lal support the candidature of Brijraj Singh and that it was not proved that the pamphlet Annexure 'A' was ever issued or circulated with the consent of Brijraj Singh. In his view Brijraj Singh had no connection with the printing and publication of the pamphlet and on that account the plea of corrupt practice set out and founded on the circulation of the pamphlet was not proved. We see no reason to disagree with the view expressed by the learned Judge.

12. It was then urged that the Maharaja Scindia of Gwalior incurred considerable expenditure as

agent of Brijraj Singh in canvassing votes and the expenditure so incurred was liable to be included in the election expenses of Brijraj Singh. It was claimed that the Maharaja and the Rajmata of Gwalior as agents of Brijraj Singh took a leading part in canvassing votes in different villages and in doing so used a helicopter and a fleet of motor cars and spent large sums of money which were not disclosed in the account of election expenses filed by the first respondent Brijraj Singh.

13. Brijraj Singh had contested the election as an independent candidate. But the appellant says that the Maharaja and the Rajmata of Gwalior addressed election meetings and in those meetings they declared that Brijraj Singh was sponsored as a candidate by them, and that the voters should support Brijraj Singh. Brijraj Singh in his evidence stated that the Maharaja had the "Central Election office of Maharaja of Gwalior" representing the alliance of various political parties and individuals opposed to the Congress candidate and in propagating its views and policy during the election this organisation also supported the candidates who opposed Pancham Singh.

14. There was no reliable evidence that the candidature of Brijraj Singh was sponsored by the Maharaja and the Rajmata of Gwalior. The opinion expressed by the witness Dataram cannot do duty for evidence in support of the case of the appellant. Sanwaldas Gupta and Kalyansingh Tyagi stated that they had requested the Maharaja to adopt Chhotey Lal as his candidate for election, but they were told by the Maharaja that he had already decided to set up Brijraj Singh as his candidate and that they also should actively support him. The evidence of these witnesses was found to be unreliable by the High Court. In our judgment the High Court has rightly rejected their testimony. It was said that in certain villages speeches were made by Brijraj Singh that he was set up as a candidate by the Rajmata of Gwalior. But there is no reliable evidence in support of that case.

15. Reliance was strongly placed upon visits made by the Rajmata of Gwalior at villages Kelaras and Sabalgarh on February 4 or February 5, 1967, with a fleet of motor cars and about the speeches delivered in those villages declaring that Brijraj Singh was set up by her and that the voters should vote for him and strengthen her hands. It is also said that the Maharaja visited Kelaras, Pahadgarh, Sujarma, Budhreta, Kulouli, Sabalgarh, Jhundpura and Narhela on February 11 or 12, 1967, in a helicopter and addressed meetings in those villages and in his speeches declared that Brijraj Singh was sponsored as a candidate by him and his mother and the voters should vote for him. A large number of witnesses Keshrisingh, Narayan, Sardarsingh, Dhaniram, Phoolsingh, Kanhaiyalal, Mata Prasad, Dwarka Prasad, Sanwaldas Gupta, Kalyansingh Tyagi, besides the appellant, were examined in support of that case. Brijraj Singh admitted that on February 4 or 5, 1967, the Rajmata had visited the villages Kelaras and Sabalgarh and had addressed meetings in those villages. But he denied that she declared in those meetings that he was set up as a candidate by her. He further stated that the Maharaja had visited on February 11 or 12, 1967, five villages, Kelaras, Pahadgarh, Budhreta, Jhundpura and Sabalgarh in a helicopter and addressed meetings in those villages. But in none of those meetings did he declare that Brijraj Singh was a candidate set up by the Maharaja. The witnesses examined on behalf of the appellant were, in view of their general tenor, found unreliable. The learned Judge therefore stated that on February 4 or 5, 1967, the Rajmata of Gwalior visited two villages, Kelaras and Sabalgarh and addressed meetings there; and her son the Maharaja visited five villages, namely, Kelaras, Pahadgarh, Budhreta, Jhundpura and Sabalgarh in a helicopter on or about February 11 or 12, 1967, and addressed meetings there, but there was no reliable evidence to prove that Brijraj Singh was sponsored as a candidate by the Rajmata or the Maharaja of Gwalior. In the view of the learned Judge the testimony of the witnesses on behalf of the appellant was "so thoroughly unreliable that no reliance could be placed upon it". He concluded, after considering the evidence of Budharam, that Brijraj Singh was an independent candidate and contested the election as an independent candidate, and even though meetings were addressed by the Maharaja and his

mother - the Rajmata - they did not say that Brijraj Singh was set up as "their candidate". We have carefully gone through the evidence of the witness and heard the arguments advanced at the Bar and see no reason to disagree with the view taken by the learned Judge.

16. The evidence of the witnesses that Brijraj Singh travelled with the Maharaja of Gwalior in his helicopter and visited several villages for his election campaign was also unreliable and was, in our judgment, rightly disbelieved. The evidence shows that when the Maharaja visited the village Kelaras the only occupants in the helicopter were the Maharaja and the pilot and that Brijraj Singh was not in the helicopter when the Maharaja visited Kelaras. Similarly about the village Jhundpura there is evidence that Brijraj Singh was not with the Maharaja in the helicopter. About the village Budhreta the witness Phool Singh deposed that Brijraj Singh was in the helicopter travelling with the Maharaja. But from the cross-examination of the witness it appears that his testimony was "worthless". The testimony of Phool Singh was inconsistent with the testimony of Ramcharanlal, Sarpanch of the village. Similarly about the visit to Sabalgarh village, two of the witnesses examined were Budhram and Sanwaldas Gupta. Budhram said nothing about Brijraj Singh accompanying the Maharaja in the helicopter. Sanwaldas Gupta supported the case of the appellant, but having regard to his interest in the appellant and the general unreliability of his testimony, he could not be believed. About the village Pahadgarh, according to Mata Prasad examined on behalf of the appellant, Brijraj Singh was in the helicopter and the witness claimed that he had taken photographs of Brijraj Singh while he was in the helicopter. We have seen the original photographs Exts. P-11-A, P-11-B, P-12-A, P-12-B, P-13-A and P-14-A which are in respect of the journeys by the helicopter, the helicopter getting ready for take off, of the meetings addressed by the Maharaja and of the occupants in the helicopter. Some of the photographs are so hazy and indistinct that it is impossible to identify any one in the group. For instance the photograph Ext. P-13-A in which it is claimed that Brijraj Singh was in the helicopter shows merely a smudge and it is impossible to say that any one was sitting in the helicopter. In the view of the learned Judge the witness Mata Prasad and Dwarka Prasad had been tutored to give false testimony that Brijraj Singh had accompanied the Maharaja at the time when the helicopter landed and also when it took off and on the consideration of the evidence it was established that Brijraj Singh was not with the Maharaja of Gwalior either at the time when the helicopter landed at the five villages - Kelaras, Jhundpura, Budhreta, Sabalgarh and Pahadgarh or when the helicopter took off. The learned Trial Judge disbelieved the witness Mata Prasad. We have scrutinised the evidence of Mata Prasad and have seen the original photographs and have no doubt that the learned Judge was right in holding that the testimony of the witness Mata Prasad was unreliable.

17. In the absence of any connection between the canvassing activities carried on by the Maharaja and the Rajmata with the candidature of Brijraj Singh, it is impossible to hold that any expenditure was incurred for Brijraj Singh which was liable to be included in the election expenses of the first respondent. Under Section 123(6) of the Representation of the People Act, 1951, the incurring or authorising of expenditure in contravention of Section 77 is a corrupt practice and Section 77 provides, in so far as it is material :

"(1) Every candidate at an election shall, either by himself or by his election agent, keep a separate and correct account of all expenditure in connection with the election incurred or authorised by him or by his election agent between the date of publication of the notification calling the election and the date of declaration of the result thereof, both dates inclusive.

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(3) The total of the said expenditure shall not exceed such amount as may be prescribed."

Unless it is established that the expenditure was incurred in connection with the election by the candidate or by his election agent or was authorised by him it is not liable to be included under Section 77 of the Representation of the People Act. We agree with the High Court that under Section 77(1) only the expenditure incurred or authorised by the candidate himself or by his election agent is required to be included in the account or return of election expenses and thus expenses incurred by any other agent or person without anything more need not be included in the account or return, as such incurring of expenditure would be purely voluntary. Assuming that expenditure was incurred by the Maharaja and the Rajmata for the purpose of canvassing votes against Raja Pancham Singh, in the absence of any evidence to show that the Maharaja and the Rajmata of Gwalior acted as election agents of Brijraj Singh or the expenditure was authorised by Brijraj Singh it was not liable to be included in the account of the election expenses.

18. We agree with the High Court that there is no evidence on the record to prove that Brijraj Singh actually spent any money on the helicopter used by the Maharaja in visiting the five villages and the two cars used by the Rajmata in visiting the two villages. There is no evidence on the record direct or circumstantial to prove that Brijraj Singh had authorised the Maharaja and his mother to incur the expenditure on the helicopter and the two cars. It is not necessary then to consider whether the expenditure incurred by the Maharaja and the Rajmata of Gwalior in respect of the helicopter and the motor cars can be said to be expenditure incurred by a political party for carrying on propaganda to promote their views and their party interest and their policies and to educate the electoral constituency, and on that account is not liable to be included in the election expenses of the candidate.

19. Having carefully considered the evidence and having heard the arguments advanced at the Bar at considerable length, we are of the view that the appellant has failed to establish that Brijraj Singh was set up as a candidate by the Maharaja or the Rajmata of Gwalior as their nominee or that the Maharaja and the Rajmata had incurred any expenditure as an agent of Brijraj Singh or the expenditure incurred by the Maharaja and the Rajmata of Gwalior was authorised by Brijraj Singh and was liable to be included in his account of election expenses under Section 77 of the Representation of the People Act, 1951.

20. The appeal fails and is dismissed with costs in favour of the first respondent. The order of costs in favour of the 4th respondent passed by the High Court is set aside.

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