

Raghuvir Singh

Vs

Raghubir Singh Kushwaha

Civil Appeal No. 1597(NCE) of 1968

(V. Bhargava, K.S. Hegde JJ)

07.10.1969

JUDGMENT

HEGDE, J. -

1. This is an appeal under Section 116-A of the Representation of the People Act, 1951 (to be hereinafter referred to as the Act). It arises from Electric Petition No. 37 of 1967, in the High Court of Madhya Pradesh (Indore Bench). That was an application filed by the appellant under Section 81 of the Act challenging the validity of the election of the respondent from the Bhind Assembly Constituency of Madhya Pradesh on various rounds. The election in question took place in February, 1967. In that election as many as five candidates contested, amongst whom the respondent, the nominee of the S.S.P. was one. His main rival was the Congress candidate Shri Narsingh Rao Dixit. The polling took place on February 17, 1967 and the votes were counted on February 21, 1967. The respondent secured 20,928 votes and his nearest rival Shri Narsingh Rao Dixit secured 14,873 votes. The other candidates secured much less and it is not necessary to refer to them in the course of this judgment. The respondent was declared duly elected.

2. The petitioner is one of the electors in the Bhind Assembly Constituency. Obviously he is a supporter of Shri Dixit. From the facts and circumstances of the case it is clear he is fighting the battle of Shri Dixit.

3. The election of the respondent was challenged in the High Court on numerous grounds. On the pleadings, several issues were raised. As many as 35 witnesses were examined on behalf of the appellant and 49 on behalf of the respondent. The learned Trial Judge came to the conclusion that none of the grounds alleged in the petition was established. He accordingly dismissed the election petition with costs. Hence this appeal.

4. Though various allegations of corrupt practices were made against the respondent, most of them were not pressed at the hearing of the appeal. Only three out of the many grounds taken in the petition were pressed for our acceptance. Hence we shall confine our attention only to those grounds.

5. It was alleged in the election petition that Shri Triyogi Narain Sharma, the election agent of the respondent who was also the Editor of the newspaper 'Udgar' had published false statements of facts, knowing them to be false regarding the personal character of Shri Dixit with a view to prejudice his chances in the election, in the 'Udgar' issues, dated February 1, 1967, February 8, 1967 and February 15, 1967. It was further alleged that those issues were freely distributed by the respondent, Shri Sharma and other supporters of the respondent. In the election petition it was

alleged that Shri Sharma had been appointed as the election agent of the respondent on January 25, 1967.

6. The High Court came to the conclusion that Shri Sharma was appointed as the election agent of the respondent only on February 16, 1967 and not on January 25, 1967. This finding was not challenged before us.

7. After a careful examination of the articles complained of, the High Court held that they contained false statements of fact relating to the personal character and conduct of Shri Dixit; those statements were known to be false to Shri Sharma and they were published with a view to prejudice Shri Dixit's chances in the election. On a reading of the articles in question, there can be hardly two opinions about those articles. We are in complete agreement with the High Court on this aspect of the case.

8. The question whether those articles were published with the consent or knowledge of the respondent does not arise for decision as it was not alleged in the election petitioner that they were published either with the consent or knowledge of the respondent or at his instance. It is clear from the evidence on record that Shri Sharma and Shri Dixit were bitter enemies from a very long time. Shri Dixit had filed a suit for defamation against Shri Sharma and had obtained a decree for damages against him. That matter was pending in appeal at the time of the election in 1967. It is also clear from the evidence that Shri Sharma had worked against Shri Dixit in the earlier elections as well. Therefore, Shri Sharma needed no provocation from any outside source for publishing scurrilous articles against Shri Dixit.

9. As mentioned earlier, Shri Sharma was appointed as the election agent of the respondent only on February 16, 1967. Therefore the publication of any false statement by him earlier to that date would not invalidate the election of the respondent unless it is proved that the respondent had consented to the same.

10. The respondent's consent to the publication of those statements was attempted to be established by showing that the relevant issues of 'Udgar' were distributed by the respondent. The allegations relating to the distribution of those issues are found in Paragraph 7-A(ii) of the petition. The same reads thus :

"That the circulation of the said weekly paper was of fairly large during the election period and the copies of the said newspapers were distributed by the returned candidate and his election agent, Shri Triyogi Narain Sharma and M/s. Rajhans Singh, Padma Singh of the village Pandri, workers and agents of the returned candidate with the consent of the returned candidate and his election agent in villages Akoda, Bilav, Dahoha, Lahnoli, Pulaoli, Bajhai, Kanawar, Pandri, Bisalpura, Umri, Nunheta and the town of Behind on 1-2-1967, 10-2-1967, 12-2-1967, 15-2-1967, 16-2-1967 and 17-2-1967, in order to prejudicially effect the prospects of the election result of Shri Narsingh Rao Dixit, the Congress candidate". The allegation in question is quite vague. The same does not make it clear as to which persons distributed which issues in which villages and on what date. We asked the learned Counsel for the appellant to make it clear to us as to whether all the persons mentioned in the petition distributed all the issues in all the villages and on all the dates mentioned therein. His answer was that they did so. Such an allegation appears to be wholly unbelievable. It is most unlikely that the candidate and his election agent could have concentrated on distributing 'Udgar' issues on the election day as

well as on the day previous to the election. Anybody who knows something about election can easily visualise the various duties that a candidate and his election agent have to perform on the day prior to the election. On the date of the election there is little time for canvassing. Moreover, it is most unlikely that all these people could have visited all the villages mentioned in the petition on all the dates mentioned. Evidently a wide net was thrown in the election petition to see if anything can be caught. Canvassing is forbidden for 24 hours before election. The allegation as regards the distribution of 'Udgar' issues appears to us to be artificial.

11. The learned judge of the High Court was unable to rely on the evidence adduced by the petitioner relating to the distribution of the 'Udgar' issues mentioned earlier. He has rejected the evidence of all the witnesses examined by the appellant to prove the factum of distribution. In the matter of appreciating oral evidence, the Appellant Courts attach great value to the opinion formed by the Trial Judges. That should be more so in the case of an election petition containing charges of corrupt practices, firstly because those charges are quasi-criminal in character and secondly they are tried by a judge of the High Court. This Court does not re-appreciate oral evidence unless there are special reasons for doing so.

12. If the evidence adduced by the appellant is true, then thousands of copies of 'Udgar' should have been printed on the dates mentioned earlier. We have from the testimony of the printer of those issues who was examined as a witness on behalf of the respondent that on each of those dates only 25 copies of 'Udgar' were printed. There is no reason to disbelieve his testimony. The same has been accepted as true by the learned Trial Judge. That circumstance largely falsifies the evidence adduced on behalf of the appellant.

13. In the course of the hearing of this appeal, only the evidence relating to the distribution of the issues in question in the town of Bhind was commended for our acceptance. We were not referred to the evidence relating to the distribution of those issues in other places. The witnesses who speak to the distribution of those issues in Bhind town are P. Ws. 1, 3, 4, 8, 9, 16, 18, 23, 26, 27, 31 and 33. P.W. 1's evidence is to the effect that the respondent, Shri Sharma and other workers of the respondent distributed those issues at Bhind every day during the 15 or 20 days prior to the date of poll. It is obvious that this statement is a highly exaggerated one. As seen earlier, the statements complained of are those published in the issues on 1st, 8th and 15th of February (Exhs. P-1 and P-3). P.W. 1 is a witness to support most of the corrupt practices alleged in the petition. The same is true of P. Ws. 3, 4, 9, 16, 18 and 23. These are all omnibus witnesses. P.W. 8 was one of the candidates at the election. From the admissions made by him it is clear that he was not a genuine candidate. It is likely that he had been put up by Shri Dixit to divide the votes. He is also an omnibus witness. P.W. 8 is a Congressman. He was an active Congress worker. He was also the Congress member of the Nagar Palika, Bhind. P. W. 16 says that he was an ex-Congress man but at the time of the election, he did not belong to the Congress party, but he admitted that Shri Dixit had accompanied the Barat of his son's marriage from Bhind to Jhansi about 10 months before he gave evidence in the Court. It also appears from his evidence that he had taken a loan of Rs. 15,000 from the Gramini Project under the control of the Industries Minister. It may be noted at this stage that till the last election Shri Dixit was one of the Ministers of the Madhya Pradesh Government. It is clear from the evidence of P.W. 18, that he was interesting himself in the election and there can be hardly any doubt that he was siding with Shri Dixit. P.W. 26, is a member of the Congress party. P.W. 27's evidence instead of helping the appellant supports the case of the respondent. He deposed that "five or ten days before the polling date the respondent with 2 and 4 persons whose names, I do not know had visited my Mohalla at the time of the last election. He simply asked for votes from us, the

Mohalla people and did nothing. I did not receive any issue of the newspaper from the respondent or his companions on that occasion". But he did add that respondent's companions distributed them in his Mohalla. Obviously this last statement refers to some occasion other than that referred to by him earlier. P.W. 31, is also a Congressman.

14. It is common knowledge that as a result of excitement and faction feelings generated during election, assistance of large number of seemingly disinterested witnesses can be availed of to support an election petition. It is regrettable that several candidates are not able to take their defeat sportingly. From the spate of election petitions coming to courts, one is almost left with the feeling as if an election petition is an essential part of the election itself. But that is not to say that no corrupt practice is employed during election. The task of the Court to separate the grain from the chaff is an extremely difficult one.

15. On an assessment of the entire evidence in the case, we are in agreement with the Trial Court that the allegations that the respondent either personally or through others got distributed the 'Udgar' issues of the dates mentioned earlier is not satisfactorily established.

16. The next contention taken is the one relating to the alleged statement made by the respondent in a public meeting held at Bhind on January 23, 1967, accusing Shri Dixit as having procured the withdrawal of the candidature of P.W. 11, Shri Ramphal, the nominee of the Republican Party after paying him a bribe of Rs. 2,000. Shri Ramphal was nominated as one of the candidates for the election. He was put up as the nominee of the Republican Party. He withdrew his candidature on January 23, 1967. It is alleged that immediately after Shri Ramphal withdrew his candidature, the respondent held a public meeting in Bhind and at that meeting announced that Shri Dixit had procured the withdrawal of Shri Ramphal by giving him a bribe of Rs. 2,000. This allegation was denied by the respondent. He denied that he addressed any meeting on the January 23, 1967. He also denied that in any of his meetings he had alleged that Shri Dixit had procured the withdrawal of the candidature of Shri Ramphal by paying him bribe. According to the respondent's case the withdrawal of the candidature of Shri Ramphal was resented by the Republican Party; consequently they arranged a procession and a public meeting on January 24, 1967, wherein slogans were raised and speeches made accusing Shri Dixit of having procured the same by bribing Shri Ramphal.

17. The High Court came to the conclusion that a meeting was held at Bhind on January 23, 1967. It also came to the conclusion that a procession was taken on the 24th with the effigy of Shri Ramphal which effigy was disgraced and burnt. From the facts proved, there is no doubt that Shri Ramphal's conduct had incensed the members of the Republican Party. They had condemned it as an act of betrayal. His effigy was taken out in a procession. It was beaten with sandals and burnt. There is also no doubt that the members of the Republican Party rightly or wrongly thought that Shri Dixit was responsible for the withdrawal of the candidature of Shri Ramphal. They also appear to have been under the impression that Shri Ramphal had been bribed. The petitioner seems to have exploited that incident and given it a different shape. The respondent's case in this regard is supported by the testimony of R. Ws. 35 and 39, R.W. 39, Raja Ram is the President of the Republican Party of Bhind District. On an overall appreciation of the evidence in this case, we are in agreement with the finding of the Trial Court that it is not proved that the respondent had arranged for any public meeting in connection with the withdrawal of the candidature of Shri Ramphal or that he had accused Shri Dixit of having procured the said withdrawal by paying bribe. The witnesses examined in support of the said charge are again P. Ws. 1, 3, 4, 8, 9, 16, 18, 19 and 23. We have already considered their evidence. For the reasons earlier mentioned, we feel unable to rely on their testimony.

18. The only other plea taken is that in a public meeting held in the village Pulaoli, Shri Madho Rao Scindia of Gwalior, who was supporting the respondent, announced on the eve of the election a bribe of Rs. 20,000 for completing the school building of that place, if no even a single voter of that village voted for the Congress. This allegation is unworthy of serious consideration. It is most improbable that any person would make an offer of that type. If any such offer had been made it would have been considered as a joke. None could seriously believe that not even a single voter of a village would vote for the Congress candidate. The condition said to have been attached to the offer of bribe is such as to make the version unbelievable. That apart, the votes of each village are not counted separately. No one can find out whether the voters of any particular village have voted for any particular candidate or not. Pulaoli village was one of the many villages forming part of a single polling booth. If any supporter of the respondent had made an offer like the one complained of, immediately his opponents would have exploited the same by exposing its hollowness. The witnesses who support the petitioners; case on this part of his case are P.W.'s 2, 16, 17, 28 and 34. The respondent has examined R. Ws. 34, 35, 45, 46 and 49 to repudiate the charge. We have already considered the reliability of the testimony of the P.W. 16. We shall not refer to his evidence again. So far as P.W. 2 is concerned, he was a worker in the J. C. Mill at Gwalior since 1946. His explanation for being in the Pulaoli village at the time of the meeting in question is that he was on leave at that time and had come to the Pandri village as his wife's health was not good. In cross-examination he admitted that during the period in question his wife was not under the treatment of any doctor or physician nor was it necessary to give her any treatment at that time. He deposed that his wife was deranged in mind for the last about 13 years. It was suggested during his cross-examination that he had taken leave during elections in order to work for Shri Dixit. There appears to be force in this suggestion. P.W. 17 was a witness for Shri Dixit in the defamation case that he filed against Shri Sharma. P.W. 28 is one of those omnibus witnesses who have supported petitioner's case in several aspects. P.W. 34 is the petitioner himself. The Trial Court has rejected the testimony of these witnesses and preferred to accept the testimony of the witnesses examined on behalf of the respondent. We are in agreement with the Trial Court that the charge in question has not been established.

19. None of the other grounds taken in the election petition was pressed before us.

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

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