

Shivamurthy Swami Inamdar Veerabhadrappa Veerappa

Vs

Agadi Sanganna Andanappa Chanbasangouda Hanumanthagouda Patil and Another

Civil Appeals Nos. 980-981 of 1968

(Hegde, J.)

11.02.1970.

JUDGMENT

HEGDE, J. -

1. These are appeals under Section 116-A of the Representation of the People Act, 1951, (in short 'the Act') from the decision of the High Court of Mysore in Election Petitions Nos. 3 and 6 of 1967. These petitions were tried together and decided by a common judgment. A good portion of the evidence led in the case is common to both the petitions. Therefore we shall proceed to deal with these appeals together.

2. On January 13, 1967, notifications were issued calling for the election of one member for the Lok Sabha the Koppal constituency as well as eight members to the Mysore Assembly from the eight assembly constituencies included in that Parliamentary constituency. One of those assembly constituencies was the Yelburga constituency in the District of Raichur. The last dated for present the nominations was January 19, 1967. The scrutiny of the nominations took place on January 21, 1967 and the poll was held on February 19, 1967. Both in the Koppal Lok Sabha constituency as well as in the Yelburga assembly constituency, the main contest was between the Congress candidates and the candidates of Lok Seva Sangh. The appellant in Civil Appeal No. 980 of 1968 was the candidate of L.S. S. for the Lok Sabha Koppal constituency and the 1st respondent in that appeal Singanna was the congress nominee. The appellant in Civil Appeal No. 981 of 1968 was the candidate for the L.S. S. in the Yelburga assembly constituency and the 1st respondent therein C. H. Patil was the Congress nominee. The Congress candidates succeeded by a large manority both in the Parliamentary constituency as well as in the Assembly constituency. The results of the elections were declared on February 24, 1967. Their elections were challenged by the nominees of the L.S.S. on various grounds. So far as the respondent in Civil Appeal No. 980 of 1968 is concerned it was said that he was disqualified for being a candidate both under Article 102 of the Constitution as well as under Section 9(a) of the Act. So far as the 1st respondent in Civil Appeal No. 981 of 1968, is concerned, it was said that he was disqualified for being a candidate under Article 191 of the Constitution and Section 9(a) of the Act, and further it was alleged it was alleged that both of them were guilty of offences under Section 123(3) and 123(7) of the Act. It was further said that the 1st respondent in Civil Appeal No. 980 of 1968 was also guilty of an offence under Section 123(1) of the Act. The High Court of Mysore which tried these election petitions rejected the allegations made on behalf of the appellants and dismissed the election petitions with costs. These appeals are directed against the decision.

3. It will be convenient if we take up first the common grounds alleged against the returned candidate. Thereafter we shall take up the grounds that are special to each of them.

4. A large number of witnesses have been examined to show that a booklet entitled "Congress Tattva Prachara Padyavali" (Ext. 28) was composed and published with the consent of the returned candidates by their agent Channappagouda Master, P.W. 18. It was said that the poems in the said booklet amount to an appeal to the voters to vote for the Congress candidates on the ground of religion. It was further said that the symbol on the front page of the booklet is a religious symbol and that the said symbol was used for the furtherance of the prospects of the election of the Congress candidates. To establish this allegation, a large number of witnesses have been examined. Out of them, the learned counsel for the appellants commended for our acceptance, the evidence of P.Ws. 2, 3, 4, 5, 6, 7, 8, 10, 13 and 24. At this stage we may mention that P.W. 18, did not support the appellants; case. He denied having canvassed on behalf of the returned candidates or having made any speeches in public meetings supporting their candidatures.

5. The High Court has come to the conclusion that the evidence adduced on behalf of the appellants is insufficient to come to the conclusion that P.W. 18 printed or published the booklet in question at the instance or with the consent of the returned candidates. If this conclusion is correct then it is unnecessary to go into the question whether the booklet in question was printed and published by P.W. 18 or whether the poems therein amount to an appeal to the voters to vote for the Congress candidates on the grounds of religion. It is also unnecessary to go into the question whether the symbol complained of can be considered as a religious symbol.

6. A senior Judge of the Mysore High Court has tried this case. He felt unable to accept the evidence adduced on behalf of the appellants to show that the booklet in question was printed and published with the consent of the returned candidates. The opinion of the trial Judge is entitled to great weight. It would be more so while dealing with a complaint of a corrupt practice in an election, an accusation which is akin to a charge of an offence. This Court, except under exception circumstances, does not interfere with the findings of fact reached by the Trial Courts in election petitions. This Court had occasions to observe that partisan feelings aroused during election die very slowly and therefore it is not difficult to procure a large number of witnesses seemingly disinterested, to support the case of the candidates.

7. In addition to the fact that the Trial Court has not relied on the evidence of the witnesses who gave evidence to indicate that P.W. 18 persistently appealed to the voters to vote for the Congress candidates in the name of the religion with the consent of the returned candidates, there is the further fact namely that the evidence give by the witnesses is materially different from the allegations made in the election petitions. Most of the witnesses examined on behalf of the appellants to prove the contravention of Section 123(3) have given evidence to the effect that P.W. 18 made speeches in one or other public meetings to support to the Congress nominees or canvassed votes for them. They further deposed that in his speeches he explained to the audience the contents of Ext. 28, though some of them referred to singing some songs. But the version given in the election petitions is materially different. In election petition No. 3 of 1967, it is alleged :

"A booklet entitled 'Congress 'Congress Tattva Prachara Padyavali' composed by the said Channappagouda Master was got printed at the Hombali Brothers, Printers, Gadag in January, 1967 and the songs or poems in the said booklet were sung by the Channappagouda Master all over the Yelburga constituency in the propaganda meetings of the respondents and the said Chanbasangaouda Patil, both of these candidates also acting as each other's canvassing agent. Hundreds of the said booklets were printed and distributed all over the constituency during the entire period available for election campaigning for both the said Congress candidates."

8. In addition to the circumstance that there is material difference between the case pleaded and that sought to be proved, the appellants' case is further weakened by the fact that in their pleadings, none of the necessary particulars of the grounds alleged were given. Neither the dates and time on which the public meetings were held nor the places where those meetings were held were mentioned therein. Therefore it would have been extremely difficult for the returned candidates to rebut the evidence adduced on behalf of the appellants. The learned counsel for the appellants is right when he contends that the mere absence of the absence of the particulars of the grounds alleged is not sufficient to dismiss the election petition but that undoubtedly is a circumstance to be borne in mind while appreciating the evidence adduced. That circumstance goes to indicate that allegations were made in the election petitions without ascertaining facts and thereafter evidence was gathered to support those allegations. A wide net appears to have been cast in the election petitions and the details tried to be supplied by the evidence of obliging witnesses. Under these circumstances we agree with the Trial Court that no value can be attached to the evidence adduced to show that the returned candidates had contravened Section 123(3). The other pamphlets relied on before the High Court to establish the contravention of Section 123(3), were not relied on before us.

9. Another common ground urged against the returned candidates is that both of them had contravened Section 123(7) by obtaining or procuring the assistance of Government servants for the furtherance of the prospects of their election.

10. It is alleged in the election petition that the returned candidates had secured for the furtherance of the prospects of their election, the assistance of Shri Deshpande, Block Development Officer, Kushtagi; Shri Devappa of Rampur, Police Patil; Gururaogouda Desai of Malekop Tal, Pattedar Patward; Shekhargouda Pattedar Patwari of Bochenhalli, Koppal Taluka; Krishnrao Vakil of Yelburga, Pattedar Police Patil of Kudarikotigi; Channappagouda of Mannapuri, Gumasta Patwari of Anagondankop and Pundangouda, Police Patil of Halkeri.

11. During the trial of the case, no evidence was led to substantiate the allegation that Shri Deshpande or Devappa had worked for the returned candidates. Hence we need not consider that part of the appellants' case.

Section 123(7) to the extent material for this case reads thus :

"Corrupt practices. - The following shall be deemed to be corrupt practices for the purposes of this Act.

* * * * *

(7) The obtaining or procuring or abetting or attempting to obtain or procure by a candidate or his agent or, by any other person with the consent of a candidate or his election agent, any assistance, other than the giving of vote, for the furtherance of the prospects of that prospects of that candidate's election, from any person in the service of the Government and belonging to any of the following classes, namely....

(f) revenue officers other than village revenue officers known as Lamberdars, Malguzars, Patels, Deshmukhs or by any other name, who are remunerated by a share of, or commission on, the amount of land revenue collected by them but who do not discharge any police functions....."

12. Under this sub-section as it now stands all village revenue officers by whatever name they are

called will stand excluded from the scope of Section 123(7), if their duty is to collect land revenue and if they are remunerated by a share or commission on the land revenue collected by them and if they do not discharge any of the police functions.

13. After analysing the evidence, the High Court came to the conclusion that Pattedar Patwaris namely Gururao Desai of Melkop, Sekharagouda of Bochenhalli and Channappagouda of Mannapur are excluded from the scope of Section 123(7) as they were Village Revenue Officers whose duty was to collect land revenue and that they were remunerated by a share or a commission on the land revenue collected by them and further that they did not discharge any police functions. This finding is supported by the evidence on record and we see no reason to differ from the conclusion reached by the High Court. Apart from that, these offices stood abolished in 1963 as we shall presently see.

So far as C.H. Patil (respondent in Civil Appeal No. 981/68) is concerned, there is absolutely no evidence to show that he was a Police Patilki Patilki of Halkeri village and that some Watan property had been assigned to the family but these Watans had been abolished sometime back and C. H. Patil was not working as a Police Patil at the time of the election. But even the office in question stood abolished in view of Mysore Village Office Abolition Act, 1961. Section 4 of that Act reads :

"Notwithstanding anything in any usage, custom, settlement, grant, agreement, sanad, or in any decree or order of a Court, or in an existing law relating to village offices, with effect on and from the appointed date :

(1) All village offices shall be and are hereby abolished; (2) All incidents including the right to hold office and the emoluments attached thereto, the right to levy customary fees or perquisites in money or in a kind and the liability to render service appertaining to the said village office shall be and are hereby extinguished;

(3) Subject to the provisions of Section 5, Section 6 and Section 7, all land granted or continued in respect of or annexed to a village office by the State shall be and is hereby resumed and shall be subject to the payment of land revenue under the provisions of the Code and the rules and orders made thereunder as if it were as unalienated land or ryotwari land."

14. Similarly in the case of Krishnarao as well as Pundangouda, the offices held by them stood abolished in 1963, in view of the aforesaid provision. The question whether the lands assigned to them as remuneration for the offices held by them remained to be resumed at the time of the election is irrelevant for finding out whether the holders of the offices in question continued to be village officers at the relevant time. Therefore the ground of attack under Section 123(7) must fail.

Now coming to the separate grounds urged against each of the returned candidates, we shall first take up those directed against the Parliamentary candidate Sanganna Andanappa. In the election petition, it is alleged that he was disqualified for being a candidate under Article 102(1)(a) of the Constitution on various grounds as at the time of his nomination, he was holding many offices of profit under the Government of Mysore. We shall take up each one of those grounds and deal with them. But before doing so, it is necessary to analyse the ingredients of Article 102(1)(a). That Article says that a person shall be disqualified for being chosen as, and for being, a member of either House of Parliament if he holds any office of profit under the Government of India or the Government of any State, other than an office declared by Parliament by law not to disqualify its

holder. Therefore before the provisions of that Article can be attracted, it must be established that he was holding an office under the Union or the State Government and that office was an office of profit and thereafter we must see whether the disqualification relating to that office has been removed by any Parliamentary legislation. In other words, the office in question must have been held under a Government and to that some pay, salary, emoluments or allowance is attached. The word 'profit' connotes the idea of pecuniary gain. If there is really a gain, its quantum or amount would not be material; but the amount of money receivable by a person in connection with the office he holds may be material in deciding whether the office really carries any profit-see *Revenna Subanna v. G. S. Kaggerappa*. (AIR 1954 SC 653.) This Court in several decisions has laid down the tests for finding out whether an office in question is an office under a Government and whether it is an office of profit. Those tests are : (1) Whether the Government makes the appointment; (2) Whether the Government has the right to remove or dismiss the holder; (3) Whether the Government pays the remuneration; (4) What are the functions of the holder? Does he perform them for the Government and (5) Does the Government exercise any control over the performance of those functions? see *Abdul Shakur v. Rikhab Chand* (1958 SCR 387.); *Ramappa v. Sangappa* (1959 SCR 1167.); and *Govinda Basu v. Sankari Prasad*. ((1964) 4 SCR 311.) Bearing these tests in mind, we shall now proceed to consider each of the grounds alleged. The first group of disqualification urged against Sangappa is that he was a member of Koppal Taluk Development Board as well as the members of the District Development Council of Raichur. These offices are said to be offices of profit under the State Government. This contention has no merit. He became ex-officio member of these bodies by virtue of his being elected as a member of the Mysore Legislative Council. Therefore it cannot be said that he was holding those offices under the Government. The Government neither appointed him nor could remove him. A member of the Koppal Taluk Development Board can only be removed by the Government on the strength of a resolution passed by the Board by a 2/3rd majority. A member of the District Development Board cannot be removed at all by the Government. The allowances paid for the members of the Taluk Development Board and District Development Board are intended to meet their out-of-pocket expenses. In other words they are compensatory allowances.

15. It was next said that he was a member of the Tungabhadra Board; he was appointed to that Board by the Government and as a member of that Board he was entitled to T.A. and D.A. at the rates prescribed by the Mysore Travelling Rules, 1957. We are unable to hold that this office was an office of profit. A member of that Board had no pecuniary benefit. The allowances given to him are clearly compensatory allowances.

16. It was next said that the returned candidate being a Chairman of the Koppal Taluk Agricultural Produce Marketing Co-operative Society, was holding an office of profit and that office carried with it an honorarium of Rs. 2,000/- per year and a sitting fee of Rs. 3/- per day. To this office he was elected by the members of the co-operative society. Therefore it cannot be said that he was holding that office under the Government. The fact that the co-operative society in question was dealing with the controlled articles supplied to it by the Government, does not change the legal position.

17. So far as the Khadi and Village Industries Board constituted under the Mysore Khadi and Village Industries Act, 1956, is concerned, the same is an independent Corporation though many of its activities come within the supervision of the Government and bulk of its funds are also supplied by the Government. Pursuant to the rules framed under the Khadi and Village Industries Act, 1956, certain allowances are paid to the members of the Board for the purpose of reimbursing the expenses incurred by them in attending the meetings of the Board or of any committee appointed under Section 10 of that Act. It is true that a member of that Board is entitled to a sitting fee of Rs.

16/- a day on the days he attends the meetings of the Board or any of its committees. But he cannot draw the sitting fee as well as the daily allowance. He has to draw one of the two. Therefore the sitting fee paid to the members is in reality a payment made for the purpose of reimbursing the expenses incurred by the members. Hence the sitting fee paid to the members of that Board must be considered as compensatory allowance.

18. Lastly it was said that he was disqualified for being a candidate as at the time of his nomination, there was an existing contract between him and the Central Government. This contention has no substance. The alleged contract was between the Society and the Central Government. Sanganna was only the Chairman of the Society. The Society has a personality of its own. It is fallacious to contend that because of the honorarium obtained by Sanganna, he became partner of the Society.

No other ground was urged against the election of Sanganna.

19. So far as the election of C. H. Patil is concerned, we have already considered the grounds taken under Section 123(3) and 123(7). Now coming to the grounds urged against C. H. Patil, it was urged on behalf of the appellants in Civil Appeal No. 981 of 1968 that he was disqualified firstly because he was the Police an office of profit under Article 191 and secondly that he had a existing contract with the Government when he filed his nomination. The High Court come to the conclusion that there is no satisfactory evidence to show that he was the Police Patil at the time of the nomination. The contention that he had been appointed a Representative Watandar has no substance in view of the abolition of the Watans. The hereditary right to the office of Police Patil had been abolished as far back as in 1963, as seen earlier.

20. Now coming to the alleged did qualification under Section 9(a) of the Act, there is absolutely no reliable evidence to show that Patil had a subsisting contract with the Government at the time he filed his nomination. No documentary evidence was produced to prove the same. The contract alleged is one of road work in respect of Yerenachinhal Mudhol Road, Patil had produced completion certificates from the Executive Engineer, Raichur (Exts. R-34 and R-36) to show that contract had come to an end long before he field his nomination. Hence the finding of the High Court that it had not been proved that he had a subsisting contract at the relevant time is fully justified.

21. The only other plea advanced against the election of Patil is one coming under Section 123(1). The case put forward under this head is that Patil had engaged a large number of workers from Tondhihal in connection with the road work referred to earlier but he failed to pay their wages. Hence the villagers of Tondhihal were not willing to support his candidature. In order to buy over the support of the villagers of Tondhihal, it is said that two cousins of Patil, Basangouda Mulki Patil and Pundangouda, Police patil of Halkeri wrote Ext. P-44 to one Kalkayya of Tondhihal, a supporter of L.S.S. offering to clear up the arrears of wages due to the villagers, if the villagers promise to vote for Patil. This allegation was sought to be proved by the production of P-44 and by the evidence of one Neelappa, P.W. 22. Neither the alleged writer of Ext. P-44 and by the evidence of one Neelappa, P.W. 22. Neither the alleged writer of Ext. P-44 and by the evidence of one Neelappa, P.W. 22. Neither the alleged writer of Ext. P-44 nor Kalkayya has been examined to prove that letter. kalkayya was admittedly a supporter of the L.S.S. No explanation is forthcoming for his non-examination. Therefore the High Court was right in opinion that Ext. P-44 nor Kalkayya was admittedly a supporter of the L.S.S. No explanation is forthcoming for his non-examination. Therefore the High Court was right in opining that Ext. P-44 had not been satisfactorily proved. That letter is sought to be proved by the evidence of P.W. 22. His version is a highly artificial one.

He deposed that when he chanced to pass through the village of Basangouda and Pundangouda, those persons met him at a Mutt and asked him why the villagers of Tondhihal are not supporting the candidature of Patil. Then he told them that they were opposed to Patil because he had not paid the wages of the workers that he had employed for his road work. Immediately Basangouda took out a piece of paper and wrote Ext. P-44 and read out the same to him and later on Kalkayya told him that he had received the letter in question. The place where Basangouda lives, is hardly within six miles from the place of Kalkayya. Therefore it is unbelievable that Basangouda instead of going and meeting Kalkayya would have sent him a letter and announced the contents of the letter to P.W. 22, a somewhat stranger to him. If there is any truth in this version, the best person to prove the receipt of the letter and further what happened thereafter, is Kalkayya. As mentioned earlier he has not been examined in the case. It is not surprising that the High Court did not find it possible to believe this version. It is a prima facie unacceptable version.

22. For the reasons mentioned above, these appeals fail and they are dismissed with costs. Civil Misc. Petition No. 317/1970 is also dismissed.

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