

Kashi Nath

Vs

Smt. Kudsia Begum and Others

Civil Appeal No. 230 of 1970

(J. C. Shah, A. N. Grover JJ)

16.12.1970

JUDGMENT

GROVER, J. -

1. This is an appeal under Section 116-A of the Representation of People Act, 1951, hereinafter called the "Act" from a judgment of the Allahabad High Court dismissing an election petition filed by the appellant challenging the election of respondent No. 1 to the U.P. Legislative Assembly from Constituency No. 84 Sandila (District Hardoi) held in February, 1969 on the ground that one of the candidates had not been made a party to the petition.

2. The date for filing the nomination papers of the candidates for the mid-term election in the State of U.P. was January 9, 1969. On that date nine candidates filed their nomination papers. Aizaz Rasul, who had the title of Nawab and who is the husband of respondent No. 1, had been nominated as a candidate and his nomination papers were held to be in order by the Returning Officer on January 9, 1969. After the nominations papers had been accepted Aizaz Rasul and one other candidate withdrew from the contest and seven candidates were left in the field. The polling took place on February 7, 1969. Respondent No. 1 was declared elected on February 10, 1969. It is unnecessary to mention the votes polled by all the candidates. It would be sufficient to mention that respondent No. 1 secured 32,031 and the appellant 31,955 votes. On March 27, 1969, the appellant filed an election petition in the High Court of Allahabad. Respondent No. 1 and other six candidates who had contested the election were duly impleaded as parties but Aizaz Rasul who had withdrawn from the contest was not made a party. The petition was dismissed in accordance with the terms of Section 86(1) of the Act on the ground that the allegations of commission of corrupt practices had been made against Aizaz Rasul and therefore it was incumbent on the election petitioner to have impleaded him as a respondent.

3. It is not disputed on behalf of the appellant that Aizaz Rasul was a necessary party and the failure to implead him would entail dismissal of the election petition if there was a candidate against whom allegations of corrupt practice had been made in the petition. Section 82(b) of the Act lays down in mandatory terms that such a candidate must be impleaded as a party. The allegations relevant for the purpose of disposal of this appeal which need be noticed from the election petition are contained in clauses (b) and (c) of Para 20 and Para 21. These are in the following terms :

"(b) That respondent No. 1 herself and through her consent, her agents obtained or procured and attempted to obtain or procure the services of Sri Madan Gopal Misra, Sanitary Inspector Kachauna Block, Sandila, a person in the service of the U.P. Government who resides in the Kothi of respondent No. 1 at Sandila for the

furtherance of the prospects of her election. A complaint regarding her working at the aforesaid election was made by Bishamber Dayal Gupta of Jan Sangh party to the District Magistrate, District Medical Officer of Health and District Election Officer, Hardoi, on 3-2-1969, particulars of this corrupt practice as far as possible are being given in Schedule VIII annexed to this petition.

(c) That the said Madan Gopal Misra, Sanitary Inspector (mentioned in foregoing paragraph), committed corrupt practice of undue influence defined in Section 123(2) of the Representation of People Act with the consent of respondent No. 1 her election agent by interfering with the free exercise of electoral rights of electors taking advantage of his official position and telling them that they will have to suffer from his hands in case they will not support the candidature of respondent No. 1 and vote for her. The name, date and place of commission of such corrupt practice are the same as are given in Schedule VIII to the election petition.

Para 20. - That in case it is not proved that the corrupt practices mentioned in Paragraph 20 (and in its sub-paragraphs) were committed by respondent No. 1 and her election agent or by her agents with her consent they were committed by the persons named in respective Schedules viz. Schedules VII-A and VIII in the interest of the respondent No. 1 and the same has materially affected the result of the election as the respondent No. 1 who has succeeded by a margin of 76 votes she secured more than 1,000 votes due to the corrupt practices committed in her interest."

Schedule VIII of the petition which is a part of Para 20 (c) may also be reproduced to the extent necessary :

# "SCHEDULE VIII-----Name	of the person	committed corrupt	Date	Place	Remarks	practice-----
-----	Nawab	Aizaz Rasul	2-2-1969	Village	He went with	-----
-----	Nawabhusband and Election	Malaiya Aizaz Rasul			in a jeep	-----
-----	Agent of respondent and				canvassed support	-----
-----	No. 1 for her in that village along with him.	Respondent No. 1	3-2-	1969	Village He accompanied resp-	-----
-----	Raison ondent No. 1 in her jeep and canvassed				support for her in the village along with her. "	-----
-----	" Village "	Samodha			Nawab Aizaz	-----
-----	Rasul	4-2-1969	Rachauna		He accompanied the Nawab and canvassed support for	-----
-----	respon- dent No. 1 in the respondent No. 1 in said village."					-----
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An attempt was made long after the period of limitation for filing the election petition had expired to amend Column I of the heading of Schedule VIII by the insertion of words "in whose company Madan Gopal Misra" between the words "person" and "committed" in Column I of that Schedule. That was rightly disallowed by the learned Trial Judge as a defective petition could not be allowed to be rectified after the period of limitation for filing it had expired.

4. It has been pointed out by the learned counsel for the appellant that so far as the allegation contained in Para 20(b) is concerned it has been found by the High Court that the officer mentioned therein does not fall within the category of officers specified in Section 123(7) of the Act. It has, therefore, to be decided whether the allegations in Para 20(c) read with Schedule VIII relate to the commission of a corrupt practice by respondent No. 1's husband and election agent Aizaz Rasul within the meaning of Section 123(2) of the Act. A great deal of stress has been laid on the contents

of Para 20(c) and it has been emphasised that the allegation of commission of a corrupt practice of undue influence was made against Madan Gopal Misra, Sanitary Inspector, although it was stated that the alleged corrupt practice had been committed with the consent of respondent No. 1 and her election agent. Reliance has been placed on S. B. Adityan v. S. Kandaswami and Others ((1959) SCR 368 : AIR 1958 SC 857 : (1958) SCJ 1072) where it was observed at Page 876 that a corrupt practice committed with the consent of a candidate was not in itself a new kind of corrupt practice. The consent by a candidate to the commission of a corrupt practice by some one else, whatever its consequences might be, was not itself a corrupt practice. Therefore to say that candidate consented to corrupt practice being committed by accepting a gift made to him to induce him to withdraw his candidature was not to say that he himself committed the corrupt practice. The decision in that case is clearly distinguishable on facts.

5. Now Section 123(2) defines "undue influence" as meaning any direct or indirect interference or attempt to interfere on the part of the candidate or his agent or of any other person with the consent of the candidate or his election agent with the free exercise of any electoral right. According to proviso a (i) an such person referred to above who threatens any candidate or any elector, inter alia, with injury of any kind shall be deemed to interfere with the free exercise of the electoral right of such candidate or elector. The meaning of "corrupt practice" in clause (b) of Section 82 of the Act has to be determined with reference to Section 123(2). It has thus to be seen whether any allegations of corrupt practice were made against Aizaz Rasul who was admittedly a candidate within the meaning of Section 79(b) of the Act.

6. In our judgment the High Court was right in reading the contents of Schedule VIII in the context of the allegations made in Paragraphs 20(b) and 20(c) of the petition. The election agent of respondent No. 1 Aizaz Rasul is alleged to have availed of the services of Misra, the Sanitary inspection, who is stated to be living in his Kothi at Sandila to exercise undue influence on the voters with his assistance and he is actually alleged to have exercised the said influence by carrying Misra in his jeep to Malaiya and Kachauna villages where along with him the voters were asked by Misra to vote of respondent No. 1 on pain of their suffering injury at his hands if they did not do so. The fact that corrupt practices were alleged in the aforesaid sub-paragraphs of Para 20 as having been committed by respondent No. 1 and her election agent is proved from what is stated in the first part of Para 21 as well. We are unable to accept that whatever allegations, of corrupt practices were made they were confined only to Misra, the Sanitary Inspector. The High Court was, therefore, justified in dismissing the petition under Section 86(1) of the Act.

7. The appeal fails and it is dismissed. But in the circumstances we make no order as to costs.

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