

Rampal Singh

Vs

Satyavir and Another

Civil Appeal No. 6 (NCE) of 1970

(CJI J. C. Shah, S. K. Hegde, A. N. Grover, S. M. Sikri, V. Bhargava, I. D. Dua JJ)

06.01.1971

JUDGMENT

GROVER, J -

1. This appeal from a judgment of the Allahabad High Court arises out of an election petition filed by the defeated candidate Satyavir challenging the election of Rampal Singh to the Uttar Pradesh Legislative Assembly from the Bijnor constituency. The High Court has set aside the election of Rampal Singh on the ground that the total expenditure incurred by him on his election exceeded the maximum limit of Rs. 9,000/- prescribed under Rule 90(2) of the Conduct of Election Rules and he had committed a corrupt practice as defined in Section 123(6) read with Section 77(3) of the Representation of the People Act, 1951, hereinafter called the 'Act'.

2. The appellant, who belongs to the Bhartiya Kranti Dal party contested the seat to the legislative assembly from No. 22 Bijnor General constituency. Respondent No. 1 also contested the election from the same constituency as a candidate of the Congress Party. Respondent No. 2 was put up by the Muslim Majlis. Five others contested the same seat. The poll was held on February 9, 1969 and the counting of votes took place on the following day. The appellant secured 28,766, votes, respondent No. 1 20,569 and respondent No. 2 15,896 votes. The remaining candidates secured a negligible number of votes. The appellant was declared duly elected.

3. Although in the election petition corrupt practices of bribery and intimidation of votes had also been alleged, the learned counsel for respondent No. 1 abandoned any attempt to press them. He confined his case on the ground of excessive and unauthorised expenditure. The only item which was pressed before the High Court related to the expenditure on motor fuel purchased by the appellant for his election campaign from the Vijay Engineering Corporation of Bijnor. The allegation in Para 9-A(i) of the petition was that the appellant had shown an expenditure for the period from January 1, 1969, to January 22, 1969 under the head "fuel for vehicles petrol, diesel, of a sum of Rs. 1,760 only". (The High Court found that the correct amount was Rs. 1,700.60), the payment having been made to Vijay Engineering Corporation. But in fact the amount of fuel purchased by the appellant between the said date from the said Corporation was worth Rs. 8,233.91. Vouchers and entries in the credit sale register in respect of these purchases were entered into the account of the aforesaid Corporation in the name of the appellant but later on purchases for a sum of Rs. 4,000 out of that total amount mentioned above, were shown in conspiracy with the said Corporation and by tampering with the credit vouchers and credit sale register entries in the name of Mahipal Singh who was an agent, worker and friend of the appellant. This had been done by scoring out the name of the appellant from the said documents and substituting the name of Mahipal Singh by his name. In this way the appellant had concealed an expenditure to the tune of Rs. 6,473.91.

Adding this amount to the election expenses included in the return filed by the appellant they exceeded the prescribed limit by Rs. 4,157.67. In Paragraphs 13 to 20 of the written statement all the allegations made in Paragraph 9-A(i) of the petition were specifically denied by reference to each allegation.

4. The learned Judge considered the evidence relating to the accounts of the Vijay Engineering Corporation. A large number of ledger sale registers, credit memos and bill books had been summoned from that firm and these were duly produced in court on September 29, 1969, by Budhmal Gupta, P.W. 1 in-charge sales. After he had been examined only one ledger (1968-69), one bill book from February 1, 1969, to April 1, 1969, and seven credit memo books (December 29, 1968 to March 4, 1969) were retained and the rest were given back for being taken away. Subsequently learned counsel for the election petitioner applied for the production of firm's bill books, credit memo books, credit sales register and many receipt books covering the period from September 1, 1968, to October 1, 1969, for November 3, 1969. On that date Budhmal Gupta stated that all these books and documents had been stolen away from the railway compartment while he was travelling from Bijnor to Allahabad. The learned judge did not believe the story of theft and the loss of the account books and documents and was of the opinion that they had been purposely withheld because they were damaging to the appellant's case. He was largely influenced by the extensive forgeries which had been committed with regard to the accounts shown in the names of Mohinderpal Singh (from January 24, 1969 to February 5, 1969) and Mahipal Singh (from February 6, 1969, onwards) which, according to respondent No. 1, related to the purchases made by the appellant. The learned Judge went into details about the credit memos of Mohinderpal Singh and Mahipal Singh which were 13 and 10 respectively in number and considered that it was apparent that none of them were the original memos belonging to the books in which they were found. According to the learned Judge the credit memos of Mohinderpal Singh and Mahipal Singh were not the original ones that existed in the memo books in the first instance; but were forgeries which had been prepared and inserted in the books subsequently. He found similar indications of the forgeries in the bill books. He referred to certain bills and found that they had been fabricated. The learned Judge went to the extent of even finding the bill submitted on March 11, 1969, by Rampal Singh along with his return of election expenses for Rs. 1,700.60 as a forged one. This is what he observed :

"It is a bill of the same type as those in the bill book containing bills Nos. 0201 to 0300. But its perforation line is intact and it has none of the holes that must be produced by stitching the bills together in the form of a book. Obviously this bill was never torn out of a bill book in the normal way but must have been obtained from the press in the form of a single sheet."

5. The learned Judge proceeded to hold that the ledger which had been filed appeared to have been forged in its entirety, Mahipal Singh R.W. 2 had been produced by the appellant for showing that purchases totalling Rs. 2,183.04 stated to have been made between February 6, 1969 and February 19, 1969, according to the accounts of Vijay Engineering Corporation that had gone on the record were genuinely made by him. The learned Judge was of the view that the explanation tendered by this witness for buying so much fuel on the crucial date from February 6, 1969, up to and including the polling day February 9, 1969 were hopelessly unconvincing and inadequate. The learned Judge was struck by the strange coincidence that the appellant purchased motor fuel from the Vijay Engineering Corporation every day without fail from January 1, 1969, up to January 23, 1969, and then he abruptly stopped purchasing motor fuel from that concern. The very next day, namely, January 24, 1969, an account was opened in the name of Mohinderpal Singh who also made purchases every day up to February 5, 1969, when his account too was closed and on the next day

i.e., February 6, 1969, Mahipal's account was opened and he purchased fuel every day without a break up to February 12, 1969. The obvious inference, according to the learned Judge from these three successive khatas was that they were in reality all part of one single account, namely, of the appellant.

6. The case of the appellant was that he had closed the account with Vijay Engineering Corporation on January 23, 1969 and that he made subsequent purchase of fuel from the Hitesh Automobiles Corporation only. The learned Judge compared the figures of the purchases made from that firm with the purchases made during the early period from the Vijay Engineering Corporation and found the figures of purchases from the Hitesh Automobiles incredibly low. He was further influenced by the improbability or falsity of the version of the appellant that he had made part-payment of the bill of Vijay Engineering Corporation to the extent of Rs. 810.20 on February 21, 1969. This was towards the satisfaction of the bill Exhibit A-4 for Rs. 1,700.60, dated February 1, 1969, the balance having been alleged to have been made on March 10, 1969. The learned Judge proceeded to say :

"I have already pointed out the clear signs of forgery in the bill (Ext. A-4) for Rs. 1,700.60, which was submitted by Rampal Singh along with his return of election expenses; and this forged bill, coming from the custody of Rampal Singh and passed off by him as genuine, provides convincing proof that he was a party to the falsification of the Vijay Engineering Corporation's accounts."

So he was of the opinion that even without considering the oral testimony there was ample material to warrant the finding that the figures which were present in the accounts of the firm were made for the benefit of no one else but the appellant and that the motor fuel shown in the khata of Mohinderpal Singh from January 24, 1969, to February 5, 1969 and Mahipal Singh from February 6, 1969, onwards had been actually purchased by him. There were certain other pieces of evidence on which the learned Judge also relied. One of these was Exhibit 3 which was a copy of the relevant khatas which Vimal Sarup Sharma, P.W. 6 the Secretary of respondent No. 1 had made in March (probably on 13th or 14th) after Budhmal Gupta of the Vijay Engineering Corporation had allowed him to inspect the ledger. According to Vimal Sarup Sharma, Budhmal Gupta had shown him some chits signed by the appellant or his helpers for the purchase of petrol between February 4, 1969 and February 8, 1969 and allowed him to make notes of these which were filed in court as Exhibit 4. The learned Judge was satisfied that Budhmal Gupta had played "an ambiguous role" in the case siding first with the one party and then with the other and that he was a thoroughly unreliable witness. The learned Judge believed Vimal Sarup Sharma that he had inspected the books of Vijay Engineering Corporation and made out copies Exhibits P-3 and P-4 as deposed to by him. He accepted P-3 as a true copy of the khata of the appellant and Mahipal as they existed in the firm's account in March 1969. We shall presently refer to the evidence relating to the original chits which, in our judgment, formed an essential link in the entire chain of the circumstantial and other evidence produced by respondent No. 1. The learned Judge has relied on the evidence of Bal Krishan Khanna P.W. 10 - a lawyer, who admittedly was a friend of respondent No. 1 and according to whom Budhmal Gupta had brought these chits relating to the purchase of petrol between 4th and 10th February which according to him had been signed by the appellant. These chits had also been shown to Vishwa Mitter P.W. 11 - a lawyer of Allahabad, who was related to respondent No. 1 when he visited Bijnor in May, 1969. Strangely enough the original chits were stated to have disappeared from the office of Bal Kishan Khanna in July 1969. Even though the learned Judge was satisfied that the original chits existed he found it difficult to exclude the possibility that they might not have been signed by the appellant.

7. Now indisputably the facts and circumstances which have been found by the learned Judge create a good deal of suspicion that it was at the instance of or in complicity with the appellant that the various books etc., of the Vijay Engineering Corporation were manipulated for his benefit. But the most decisive place of evidence would have been the original chits which are stated to have disappeared from the office of Khanna - the lawyer and friend of respondent No. 1. We shall presently consider his statement of the circumstances in which the chits were brought to him and how they disappeared. We find it extremely difficult to accept the testimony of Khanna relating to the disappearance of the chits. Admittedly Gupta had been won over for consideration or otherwise by respondent's secretary Vimal Sarup Sharma. It is impossible to believe that Gupta would have otherwise placed all the books of account of the Vijay Engineering Corporation relating to the account of the appellant, of Mohinderpal Singh and Mahipal Singh at the disposal of Sharma who was even allowed to make out verbatim copies. This was allowed in a most secretive and surreptitious manner as Sharma went to him at night, Gupta having told him to come at 10 or 11 p.m. to the place where the accounts were kept. Sharma's story was that Gupta gave original purchase or chits signed by Rampal Singh of which he made a note. He showed that note to Khanna and respondent No. 1. Khanna directed him to get the original chits. He approached Gupta who expressed his inability to give the original to him. However, Gupta said that he would take them to Khanna and show them to him. This was done by him and the chits were shown to Khanna in Sharma's presence. Khanna then asked Gupta to leave the documents with him and he would return them after seeing them. Gupta left the original chits with Khanna which were forty in number. Khanna put them in a drawer and later after studying them told respondent No. 1 that he had a strong case because most of the chits had been signed by the appellant. Sharma could not say where those chits were when he gave evidence in court. When asked about the date on which Gupta gave Khanna those original chits Sharma stated that they were shown to him on April 15 or 16, 1969, after the petition had been prepared. Khanna who appeared as P.W. 10 stated that Gupta was his class fellow. He gave those original chits to him some of which were signed by the appellant, some by Parveen Singh Pradhan and some by Mangal Singh. According to him the chits had been lost and although he made a search for them he could not find them. It was in the month of July that he discovered the loss. He had put them in his table drawer in his chamber, in Gupta's presence, which was not locked. He had separated the chits bearing the signatures of the appellant and the rest. The following part of his statement may be reproduced :

"In July Satya Vir came and told me the parchis would be summoned in the High Court. Then I found them missing. I told him I could not find them. I told him to summon them from Budhmal, as I might be able to trace them after searching. I did not tell Budhmal that the parchis had disappeared. After that Satya Vir Kept coming to ask if I had found them. I did not lodge any report with the police, as I could not be sure what had happened to them."

Gupta, as stated before, maintained that it was false to say that he had showed Sharma any original chits or that he went him to Khanna. The learned Judge even allowed him to be cross-examined by counsel for respondent No. 1 for whom he was appearing as a witness for reasons which are not mentioned at all.

8. The above evidence to the disappearance of the original chits for the material period which, it is alleged, bore the signatures of the appellant in the manner deposed to by Khanna creates a good deal of doubt in our mind about the soundness of the conclusion of the learned Judge which was based mainly on the falsity of the books of account of the Vijay Engineering Corporation and the other facts and circumstances which have been detailed before. It is difficult to accept the version of Khanna that the Original chits had disappeared in the manner stated by him. It seems to us that the

original chits were deliberately withheld after having been secreted away or taken from Gupta who was prepared to help respondent No. 1 in every way. The various persons concerned in this matter also are intimately connected. Gupta is an old class-fellow of Khanna who is not only a friend of respondent No. 1 but also his legal advisor in the matter of institution of the election petition. It seems to us that there has been a lot of manipulation of evidence which was not entirely for the benefit of the appellant. The very fact that the original chits disappeared or were withheld by the legal advisor of respondent No. 1 or other persons who were concerned with the conduct of his case showed that their disappearance could not have been for the benefit of the appellant. It is not shown that he had anything to gain by the disappearance of the original chits. On the contrary their production might have told a different story and completely demolished the whole case of respondent No. 1.

9. In the above view of the matter we consider it wholly unnecessary to examine the question whether Mahipal Singh was closely associated with the appellant or not and the effect of non-production of Mohinderpal Singh. We may, however, point out that the observations of the learned Judge with regard to the bill for Rs. 1,700.60 which was produced along with the return of election expenses by the appellant and about the part-payment of the bill made on February 21, 1969 which was not in round figures, are promoted mostly by the whole atmosphere of suspicion which was quite naturally generated owing to the forgeries which were found in the books of account, credit memos, bill books etc., of the Vijay Engineering Corporation. But the point which is of real consequence is that the court cannot be satisfied beyond a reasonable doubt that the manipulation of various accounts and documents was done by Gupta or some other employee of the said firm solely for the appellant's benefit. The only piece of evidence which would have concluded the matter, namely, the original chits was deliberately withheld or done away with not at the instance of the appellant but those were acting in the interest of respondent No. 1. In such a state of affairs it would not be safe to base the conclusion on a matter involving a corrupt practice which has serious consequences on such an unreliable, fabricated and manipulated evidence. The learned Judges unfortunately did not consider all these matters in their proper perspective.

10. We would accordingly allow the appeal and set aside the order of the High Court. The election petition shall stand dismissed. In view of the entire circumstances parties are left to their own costs throughout.

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