

Yogindra Prasad Shrivastava

Vs

Markandeshwar Singh

Civil Appeal No. 2236 of 1969

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

06.01.1971

JUDGEMENT

SHAH, C.J. -

1. At the mid-term poll held on February 9, 1969, for electing a member to the Bihar Legislative Assembly from Dhanaha Constituency there were four contesting candidates. Yogindra Prasad Shrivastava who stood "on the P.S.P. ticket", was declared elected by a majority of 2,162 votes over his nearest rival Markandeshwar Singh who stood "on the Congress ticket".

2. Markandeshwar Singh applied to the High Court of Patna for an order setting aside the election of Yogindra Prasad on the ground that the latter, his agents and his supporters with his consent had committed several corrupt practices at the election. There principal corrupt practices set up in the petition were -

(1) that Yogindra Prasad produced the printing of a leaflet bearing the caption "SIDHA SAWAL" and containing false and malicious statements of fact, which he believed to be false, in relation to the personal character and conduct of Markandeshwar Singh in order to malign him and to lower him in the estimation of the voters. The statements were reasonably calculated to harm and prejudice the prospects of his election. Yogindra Prasad, his agents and supports with his active consent and connivance distributed and circulated the leaflet in the Constituency during the election;

(2) that Yogindra Prasad also procured the printing of posters in different sizes containing false and malicious statements of fact in relation to the personal character and conduct of Markandeshwar Singh in order to malign him and lower him in the estimation of the voters, and the statements were reasonably calculated to harm his prospects of election. These posters were pasted on the walls at various places throughout the Constituency and were also displayed at different places during the election; and

(3) that Yogindra Prasad had obtained and produced the assistance of persons in the service of the Government, such as, Dafadars, Law Clerks of the Forest Department, Compounders of Government Hospital, Headmasters and teachers of Government or Government-aided schools and Presiding Officers of different booths for furthering his prospects at the election, particulars in respect of which were set out in Schedule 3 annexed to the petition.

The High court held that Yogindra Prasad had committed corrupt practices described in Items (1) and (2) only. Since no appeal has been preferred against the order rejecting the plea relating to the commission of corrupt practice with respect to Item (3) nothing more need be said in that behalf.

3. Item (1) related to the printing, publication and distribution of a pamphlet, in the course of the election campaign. The caption of the pamphlet was "Straight Question". The caption was preceded by the symbol of a hut which is the election symbol of the P.S.P. Candidates and a couplet in Hindi which freely translated reads, "The river bank contract and the free land will be snatched away by the people. The people will not tolerate the dacoity and murder under the mask of Congress". The caption "Straight Question" is followed by a statement that the people of Dhanaha want an answer from Markandeshwar Singh. Then were set out thirteen questions. It is not disputed that the author of the pamphlet intended to malign Markandeshwar Singh. Serious allegations were made in the pamphlet relating to the personal conduct of Markandeshwar Singh. The pamphlet attributed acts of dacoity, murder and violence to Markandeshwar Singh. It is conceded that the allegations which related to the personal character and conduct of Markandeshwar Singh were false and were reasonably calculated to prejudice the prospects of his election.

4. A poster was also published. It contained an exhortation to vote for Yogindra Prasad who described as the "Hope of the poor, Leader of the Youth, Fearless socialist". The poster bore the symbol of a hut. It was then followed by a couplet in Hindi "The river bank contract and the free land will be snatched away by the people. The people will not tolerate the dacoity and murder under the mask of Congress". Markandeshwar Singh is a ferry contractor and in the pamphlet an allegation was made that Markandeshwar Singh was charging exorbitant rates for ferrying passengers, carts and goods. The couplet apparently refers to the ferry contract and threatens that the contract and the land given in that connection will be snatched away by the people. But by publishing this poster no corrupt practice within the meaning of Section 123(4) of the Representation of the People Act, 1951 is committed. There was no statement of fact in the poster in relation to the personal character and conduct of any candidate, and the statement could not reasonably be calculated to prejudice his prospects at the election. The High Court held that Yogindra Prasad was responsible for publication of the pamphlet as well as the poster, and that the publication of the pamphlet and poster constituted a corrupt practice within the meaning of section 123(4) of the Representation of People Act, 1951. The posters were printed at Shri Shyamlal Press, Motihara and Yogindra Prasad admits that he got the poster printed. But since in our view publication of the poster does not amount to commission of a corrupt practice it is unnecessary to deal with the evidence relating to the affixing and the displaying of those posters in the Constituency.

5. Mr. Chagla appearing for Yogindra Prasad concedes that the statements made in the pamphlet were false, that the person who made those statements believed them to be false or did not believe them to be true, that they related to the personal character and conduct of Markandeshwar Singh and that the statements were reasonably calculated to prejudice his prospects at the election. Counsel only contended that the appellant Yogindra Prasad Shrivastava had not published the pamphlet.

6. It is common ground that the pamphlet was printed at the Chitra Printing Press, Padrauna. The bill relating to its printing is Ex. 8/7. According to the recitals in the bill the order for printing the pamphlet with the caption "Notice (Straight Question)" of which 10,000 copies were printed, was given by one Janardan Tiwari. The pamphlet, some posters, ballot papers and another publication called Notice "Keep Watch" were also ordered to be printed by Janardan Tiwari. An advance of Rs. 100 was given towards the printing charges and the balance Rs. 229 remained due. Gopal Prasad Sinha, proprietor of the Printing Press who was examined on Commission deposed that on the order

given by Janardan Tiwari for printing he printed the pamphlet at his Chitra Printing Press. The witness tendered the manuscript on the basis of which the pamphlet was printed. He also produced a document containing the signature of Janardan Tiwari on the manuscript and the order form. The witness also produced the bill, posters and other matters which were printed by him. The witness stated that the amount of the bill was paid by Yogindra Prasad and that Yogindra Prasad and other persons had taken away the printed pamphlets and posters. In cross-examination the witness stated that Janardan Tiwari had given him the order and the advance, and that when the order was given for printing the pamphlets, Yogindra Prasad was present and that Yogindra Prasad had taken delivery of the Printed matter.

7. Yogindra Prasad denied that he had given the order or that he had made the payment or that he had taken delivery of the pamphlets. He admitted that he had appointed one Janardan Tiwari who was an Advocate, practising in Bettiah as his counting agent, that he had made his appointment on the day of counting and before his appointment as counting agent, and that Janardan Tiwari was not asked to do and had not done any election work for him. He denied that Janardan Tiwari had accompanied him in his election tour of the Constituency. He also denied that the pamphlet was distributed at his instance.

8. Janardan Tiwari was not examined as a witness before the Court. The High Court compared the signatures of Janardan Tiwari as subscribed on the various documents produced by Gopal Prasad Sinha with his signature on the document under which Janardan Tiwari was appointed as counting agent. The High Court was satisfied that the person who had signed the documents as produced by the printer Gopal Prasad Sinha was the same person who had signed in token of accepting appointment as counting agent.

9. Yogindra Prasad examined as a witness one Ambika Tiwari - uncle of Janardan Tiwari. The witness stated that the Janardan Tiwari had not done any "propaganda work" at the election, that Janardan Tiwari was a practising lawyer at Bettiah, that at the time of election Janardan Tiwari did not go out of Bettiah except for the purpose of recording his vote. He denied that Janardan Tiwari was a counting agent of Yogindra Prasad. The witness had not been to Bettiah at the time of counting of votes and he was "not sure" if he "could identify the signature of Janardan Tiwari if shown" to him. The testimony of this witness was inconsistent even with the case of Yogindra Prasad and was unreliable.

10. Mr. Chagla appearing on behalf of the appellant however contended that the High Court was in error in taking on record the evidence of Gopal Prasad Sinha - the printer. The circumstances in which the evidence of this witness was brought on the record may first be set out. The hearing of the election petition commenced on July 15, 1969. On July 17, 1969 summons was ordered to be issued to Gopal Prasad Sinha requiring him to attend the court for examination as a witness in support of the election petition. The summons was served on the witness. Gopal Prasad Sinha informed the Court that he was lying ill and was unable personally to present himself before the Court on the day fixed for recording his evidence. Markandeshwar Singh then applied for an order that the witness be examined on commission. The High Court passed an order on July 23, 1969 on the application ordering that a commission be issued. The statement of Gopal Prasad Sinha was recorded on July 27, 1969 and was duly certified. The Court on July 29, 1969, then passed an order that the papers filed by the Commissioner do form part of the record. No objection was raised on behalf of Yogindra Prasad against the admission of the statement. Mr. Chagla, relying upon Order 26, Rules 7 and 8 of the Code of Civil Procedure, contends that in the absence of evidence that on the day on which the statement of Gopal Prasad Sinha was admitted on the record, and thereafter during the

course of the inquiry the witness was unable to remain present in Court his statement was inadmissible. Order 26, Rules 7 and 8 provide :

"Rule 7. - Where a commission has been duly executed, it shall be returned, together with the evidence taken under it, to the court from which it was issued, unless the order for issuing the commission has otherwise directed, in which case the commission shall be returned in terms of such order; and the commission and the return thereto and the evidence taken under it shall (subject to the provisions of the next following rule) form part of the record of the suit.

Rule 8. - Evidence taken under a commission shall not be read as evidence in the suit without the consent of the party against whom the same is ordered, unless -

(a) the person who gave the evidence is beyond the jurisdiction of the court, or dead or unable from sickness or infirmity to attend to be personally examined, or exempted from personal appearance in Court, or is a person in the service of the Government who cannot, in the opinion of the Court, attend without detriment to the public service, or

(b) the Court in its discretion dispenses with the proof of any of the circumstances mentioned in clause (a), and authorises the evidence of any person being read as evidence in the suit, notwithstanding proof that the cause for taking such evidence by commission has ceased at the time of reading the same."

No order was made under clause (b) of Rule 8 by the Court. But no objection was raised by Yogindra Prasad to the admission of the recorded statement. The record of the statement was read with his consent. There was before the Court an application received a week before the date on which the commission was returned duly executed that Gopal Prasad Sinha was lying ill and was unable to attend the Court. The Court was satisfied of the truth of the grounds in that application and directed that the witness be examined on commission. Correctness of the order issuing the commission for exemption of the witness is not challenged. There is no evidence that the sickness or infirmity which prevented the witness from attending the Court on or after July 22, 1969 did not persist till the case was finally disposed of, and that account the evidence was inadmissible. The statement of Gopal Prasad Sinha was admitted to the record on the day on which the case of Markandeshwar Singh was closed. Thereafter the evidence of Yogindra Prasad was recorded. The last witness on behalf of Yogindra Prasad examined on August 12, 1969 and there is no evidence that the witness Gopal Prasad Sinha could have attend the Court during the time the case was pending. We do think that the statement of Gopal Prasad Sinha is inadmissible.

11. Mr. Chagla contended that a proceeding charging a person for committing corrupt practice is in the nature of a quasi-criminal proceeding and the charge must be established beyond reasonable doubt that since the only evidence against Yogindra Prasad is of a single witness not supported by any documentary evidence or any evidence establishing any connection to constitute a corrupt practice, the High court was not justified in relying upon the oral testimony of Gopal Prasad Sinha in holding that Yogindra Prasad was responsible for publication of pamphlet Ext. 8/2. But the circumstances of the case of the our judgment amply support the findings recorded by the High Court that Janardan Tiwari had given the order for printing the pamphlet. Gopal Prasad Sinha is not shown to be interested in the election petitioner. Genuineness of his record is not challenged. Janardan Tiwari the person who gave the order has signed several documents which are on the

record. His signature accepting appointment by Yogindra Prasad as counting agent is before the Court and in the view of the High Court the signatures on the form of acceptance of the counting agency in the same person who gave the order. We have looked into the documents and we do not see any reason to disagree with the High Court. If it was the case of the appellant that Janardan Tiwari was some person other than the counting agent appointed by him, he should have examined Janardan Tiwari, advocate, as a witness. Ambika Tiwari deposed to a story which was palpably false. His testimony could not assess the case of Yogindra Prasad.

12. On the evidence we are unable to hold that the pamphlet was not got printed at the instance of the appellant by Janardan Tiwari, his counting agent. No rational explanation has even been suggested to us to as to why a perfect stranger bearing the name of Janardan Tiwari may spend a substantial sum of money getting printed pamphlets maligning Markandeshwar Singh. The evidence of the printer Gopal Prasad Sinha establishes that it was Yogindra Prasad appellant here who took delivery of and paid for the pamphlet. We agree with the High Court that Yogindra Prasad was responsible for the printing of the pamphlet Ext. 8/2. It is not in controversy that copies of the pamphlet were widely distributed in the Constituency during the election campaign. There is no reason to disbelieve that Yogindra Prasad was responsible for distribution of the pamphlet.

13. The appeal fails and is dismissed with costs.

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