Raghu Nath Singh

Vs

Krishna Chandra Sharma

Civil Appeal No. 246 of 1970

(J. M. Shelat, V. Bhargava, I. D. Dua JJ)

28.04.1971

JUDGMENT

SHELAT, J. -

1. This appeal, directed against the dismissal by the High Court of Allahabad of the election petition filed by the appellant, concerns the mid-term elections to the U.P. State Assembly from Mahrauni constituency in Jhansi district which took place on February 5, 1969.

2. The Appellant fought the election on the Jan Sangh party ticket, while the respondent, returned candidate, fought it on the Congress party ticket. The election petition was filed on three grounds : (1) the publication of two pamphlets (Exs. P-8 and P-9), which according to the appellant contained false statements relating to his personal character and conduct within the meaning of Section 123(4) of Representation of the People Act, 1951, (2) undue influence within the meaning of Section 123(2), and (3) incurring and authorising expenditure in excess of the prescribed amount under Section 123(6). In this appeal, we are, however, concerned with the first ground only, as counsel for the appellant told us at the very commencement of the hearing that he did not propose to press grounds 2 and 3. The appellant's case was that the said two pamphlets (Ext. P-8 and P-9) were widely circulated in the constituency by the respondent's workers and agents with his consent between January 13 to February 3, 1969, and were calculated to prejudice his prospects in the election.

3. The pamphlet (P-8), though published in the name of the Secretary, District Congress Committee, was printed at the Swatantra Press, owned by and located at the residence of the respondent. The allegation was that it was printed and published at the instance of the respondent. Besides Ex. P-8 there was another pamphlet (Ex. P-9) issued over the signature of one Agnihotri, which also was distributed by the respondent and with his consent by the said Agnihotri and others named in the petition at a public meeting addressed by the Prime Minister at Mahrauni on February 3, 1969.

4. Ex. P-8 commenced with the statement that the respondent would win by an overwhelming majority and after reciting certain acts of commission and omission of the Jan Sangh stated as follows :

> "Mr. Raghunath Singh obtained from his Jan Sangh Government thousands of rupees in the name of hailstorm. Made several farmers to give grain for procurement and he himself gave not even a single grain."

Ex. P-8 was replied to by Ex. P-10 issued from Lalitpur on January 30, 1969, in which opposition of

the Jan Sangh Party to the levy of the food grains was declared. The pamphlet also warned the public not to believe false statements made against the appellant and stated :

> "Mr. Raghunath Singh took not even a pie in the name of hailstorm. The papers can be seen in Mahrauni Tehsil."

The pamphlet, Ex. P-10, in its turn was replied to by Ex. P-9 issued, as aforesaid, under the signature of Agnihotri and was addressed to the voters of Mahrauni area. It contained amongst other things the following :

> "Immediately after becoming M.L.A. Mr. Raghunath Singh Ji got taqavi of thousands of rupees while his neighbours and poor peasants of the whole Mahrauni area kept desiring eagerly for the Government help."

5. The statements in the two pamphlets (Exs. P-8 and P-9) complained of thus related to (1) the appellant having received thousands of rupees from the Government as taqavi loans abusing his position as a member of the Legislative Assembly, and (2) of having made several cultivators in the area honour the levy imposed by the Government while he himself abstained from honouring it. The appellant's case was that both the statements were false, that they concerned his personal character and conduct, that the respondent believed them to be false or did not believe them to be true and were reasonably calculated to prejudice his prospects in the election.

6. There was, according to the appellant, a hailstorm on March 16, 1967, which swept over a number of villages in the constituency causing considerable damage to the crops, and as a measure of relief the then Government granted taqavi loans to the cultivators. The appellant, however, did not personally take any loan. Regarding the levy, his case was that he had opposed it since his party was against the levy, although it was imposed by the Government in which it was a partner. The statement that he had made several cultivators submit to it without himself contributing to it was false.

7. The respondent, on the other hand, denied that Exs. P-8 and P-9 were prepared or published by him or with his consent. He, however, contended that the statements complained of by the appellant in those pamphlets were true or at any rate he did not believe them to be untrue, that in any case they did not relate to his personal character or conduct but to his public character as a sitting M.L.A. and were not calculated to prejudice his chances in the election. His case was that the two pamphlets were published, Ex. P-8 by the Secretary of the District Congress Party and Ex. P-9 by the said Agnihotri on their own without the respondent being in any way responsible for them. Though Ex. P-8 was printed in his own press, he was not aware of that fact till after the election was over, as during that time he was not looking after the press on account of his being busy over the election work. According to him, the hailstorm did occur but it did not cause any appreciable damage, that the appellant used it to raise a hue and cry against the levy, that the appellant did obtain large amounts as taqavi loans and also exemption from the levy for his brother and other relations and servants, that he was first opposed to the levy, but subsequently supported it and that such a sudden somersault on his part raised controversy and resentment in the constituency.

8. The finding of the High Court was that though Ex. P-8 appeared under the signature of the Secretary of the District Congress Committee, it was issued, if not by the respondent himself, at least with his consent. As regards the hailstorm, there was testimony that it did occur on March 16, 1967, hitting as many as 49 villages in the constituency including Madanpur where the appellant

had his residence. The report made by the Naibtehsildar showed that it destroyed 80% of the ready crops and 50% of the standing crops in Madanpur and Bangawan villages and 12% to 25% in the rest of the 47 villages. Consequently, a remission of land revenue and grant of taqavi were recommended for Madanpur and Bangawan villages. Applications for taqavi loans were made by a number of Khatedars including Gajraj Singh, the brother of the appellant and the two widows of his deceased brothers for exemption from the levy. The appellant, however, did not authorise Gajraj to sign the said application for him. Ex. P-40 showed that exemption was granted by the tehsildar by his order, dated May 5, 1967. Distress loans to the tune of Rs. 9,000/- were granted to Khatedars in groups, one such group consisting of Gajraj, his said two widowed sisters-in-law and some others. The evidence, however, disclosed that the appellant had neither applied for nor received any such loan for himself.

9. But the respondent and some of his witnesses, R. Ws. 24,27 and 38, asserted that the appellant was joint with Gajraj, and that they, together with the said two sisters-in-law and their sons, formed a joint Hindu family, and that therefore, a taqavi loan taken ostensibly in the names of Gajraj and the said two widows was as good as a loan to the appellant or at any rate for his benefit. Both the appellant and Gajraj, however, deposed that they were separate in food, residence and estate. The evidence showed that there was a partition between them and the other members of the family although a formal document of partition had not been executed. Strictly speaking, therefore, the statement that the appellant had secured thousands of rupees from his Jan Sangh Government cannot be true. The Government also was not a Jan Sangh Government as that party was only one of the constituents of that Government.

10. The levy of foodgrains was imposed by the U.P. Rabi Foodgrains Levy (On Producers) Order issued on April 8, 1957. The evidence showed that several cultivators at first refused to honour the levy, but they paid it up subsequently on action having been taken against them by the authorities. In some cases even arrests were effected. The appellant, of-course, did not deposit any goodgrains as there was an exemption in respect of his lands. Therefore, the statement that he did not give a single foodgrain would not be incorrect. There was, however, no evidence to establish that it was at his instance or persuasion that several cultivators paid up their share of the levy. That part of the statement that he made the cultivators pay up their contribution was, therefore, not true. His counsel, however, conceded, in the course of the arguments, that the statement in regard to the levy related not to the appellant's personal conduct or character, but concerned him in his political capacity as a sitting member and a candidate on behalf of the Jan Sangh, and therefore, would not attract Section 123(4). In view of that concession, we are left only with the statement regarding the appellant having secured thousands of rupees as taqavi from the Government.

11. That statement, as found by the High Court, was false as there was nothing to show that the appellant had either applied for or received any taqavi loan for himself. Indeed, the respondent himself admitted in his evidence that when he made enquiries at the tehsildar's office, did not find any such loan having been granted in the name of the appellant. The aforesaid statement besides being untrue, must also be found, as the High Court has rightly done, to relate to the appellant's personal conduct and character as the obvious insinuation was that whereas several deserving cultivators could not set governmental assistance, the appellant, abusing his position as a member of the State Legislature, secured for himself thousands of rupees. The High Court, in our view, was on this evidence justified in holding that the statement was false, that it was made with the consent of the respondent, that it related to the personal character or conduct of the appellant, and lastly, that it was made with the object of seeing that the appellant was not elected. The High Court, on the evidence on record, also rightly held that the statement was made at a time when the respondent was

a candidate within the meaning of Section 79(b) of the Act, and therefore, Section 123(4) was applicable.

12. The question for determination, however, is whether the High Court was right in its finding that the respondent did not believe that the statement that the appellant had secured taqavi loan for himself was false or at any rate did not believe that it was true. On this question, although counsel conceded that the statement in the matter of levy did not relate to the personal character or conduct of the appellant, the two statements were so inextricably connected with each other that the evidence with regard to the one inevitably becomes relevant on the other. There is ample evidence on record, so clear that it would be somewhat superfluous to enter into its details, showing that the appellant had at first opposed the levy through meetings and even demonstrations, but that later on his attitude softened and he actually gave his support to it at meetings addressed by ministers where he either presided or was present or was present. It appears that as a member of Jan Sangh he found himself in a dilemma in the sense that though his party was opposed to the levy, it had to support it beings constituent of the Government which had imposed it. There is no doubt that this double policy on the part of the appellant raised a controversy which brought out a number of pamphlets and even newspaper comments.

13. As earlier stated, the hailstorm occurred on March 16, 1967. That was shortly followed by the order, dated April 8, 1967, imposing the said levy. The local opinion was obviously against the levy as the villages in Mahrauni constituency and particularly the appellant's own village, Madanpur, and the neighbouring village Bangawan had been hard hit. Within a few days after the imposition of the levy the appellant published Ex. R-2, dated April 27, 1967, expressing his opposition to that order and setting out the various steps which he had taken to persuade the Government not to recover the levy. The pamphlet provoked a reply, Ex. R-10, from one Killedar (R. W. 11) who attacked the double policy followed by Jan Sangh on the question of levy and called upon the appellant to resign as a member of the Assembly if he was genuinely opposed to the levy. One Krishna Chandra Pangoria and Thakur Bhawani Singh brought out another pamphlet (Ex. R-11) in which they attacked the policy of Jan Sangh as a double policy misleading the farmers of the area. Ex. R-11 appears to have been published sometime between the end of April and May 11, 1967. The appellant replied to this pamphlet by Ex. R-5, a pamphlet which must have led his opponents to believe that he had abandoned much of his earlier dissent towards the levy, for, the appellant in this pamphlet set out some of the concessions given by the Government in the matter of levy and called upon the farmers to deposit as much grain as was in excess of their personal requirements to ease famine conditions prevailing in other parts of the sub-division.

14. On June 15, 1967, appeared Ex. R-12, of which one Ram Narain Sharma and Dr. B. K. Jain were the authors. The pamphlet was in reply to Ex. R-5, for, the authors recalled the earlier protests of the appellant against the levy and his subsequent pleadings before the farmers to honour it. It also referred to the appellant's support to the policy of the Government in imposing the levy at a meeting where a minister spoke and alleged that the appellant's sudden somersault was due to his having obtained exemption from the levy for himself and his family members, thus abusing his position as a member of the Assembly and also of his having obtained large taqavi loans for himself and the other members of his family under the excuse of the hailstorm. The pamphlet proceeded to state that if these facts were true they showed a wide gulf between preaching and precept in the appellant. The appellant sought to make out that Exs. R-11 and R-12 were not published at the time they were said to have been published but were subsequently fabricated to support the respondent's case that the statements against the appellant in Exs. P-8 and P-9 were believed by him to be true. There was, however, evidence showing that they were brought out at a time when the controversy about the

levy was going on. What is somewhat important is that the allegations made against him in Ex. R-12 remained un-contradicted by the appellant.

15. Besides these pamphlets, comments also appeared in the local newspapers, such as the issues of June 14 and 16, 1967, of Dainik Jagran and in the issue of June 15, 1967, Manas Utthan. The Dainik Jagran of June 14, 1967, reported the speech of minister Sharma in support of the levy and the welcome speech delivered in that meeting by the appellant in which he was reported to have extended his support of the levy. On June 16, 1967, the appellant presided over a meeting at Bar which was addressed by the same minister. Manas Utthan, in its issue of June 15, 1967, came out with an editorial recalling the earlier protests of the appellant against the levy, placing in juxtaposition his demand for a higher procurement price for wheat at a meeting of the Collectors. The innuendo was that the appellant as a landholder was interested in obtaining at high a price for the wheat grown by him as was possible. It also hinted that the appellant had abandoned his opposition to the levy on being pulled up by his party ministers in the Government."The X-ray of his political wisdom" was how the appellant's attitude towards the levy dubbed by the editorial.

16. The respondent's case was that besides seeing these written comments he had gone round the constituency where he had heard a number of persons commenting about the change in the appellant's attitude towards the levy and ascribing that change to his having secured exemption from the levy and taqavi for himself, his relations and those serving him. He examined two of them, namely, R. Ws. 24 and 32, but curiously no questions were asked to them as to whether they had conveyed any information to him about the appellant having secured the said exemption and the taqavi loan for himself. Mr. Tripathi, therefore, was right in his comment that the respondent had failed to establish this part of his case. Nevertheless, considering the controversy which was going on in regard to the appellant's attitude towards the levy, it would be surprising if the respondent had not heard in the contituency his own partymen attributing for the shift in the appellant's attitude towards the levy the same reasons which the authors of the pamphlet Ex. R-12 had set out.

17. According to the respondent, in view of this kind of talk going on in the constituency, he visited the Tehsil office to make inquires Although he could not find there any application for taqavi loan by the appellant himself, he could ascertain that it was due to the appellant's intervention that exemptions from levy and taqavi loans were granted by that office.

18. There could be no dispute that the appellant's brother, Gajraj Singh, had applied for and received taqavi loan. Altogether a sum of Rs. 9,000/- had been distributed as taqavi amongst the cultivators of Madanpur. Though the appellant had not personally obtained any such loan, the inquiry by the respondent at the tehsil office had disclosed that it was due to his intervention that these loans had been granted. There must have been considerable talk about the appellant being responsible for these loans as well as exemptions from the levy amongst the people of Madanpur and the neighbouring areas.

19. The evidence shows that the appellant and his brother, Gajraj Singh, were separate and were no longer members of a joint Hindu family. Though they were separate in food, residence and estate, there was no division of the lands held by them by metes and bounds. According to the evidence of the appellant, the lands held by him were comprised of 4 khatas. Gajraj had deposed that 3 of these 4 khatas were in the joint names of the appellant. Gajraj and certain other relations, and the 4th khata was in the joint names of the appellant and Gajraj's son. A taqavi loan, being a distress loan for the betterment of the land, though granted in the name of Gajraj Singh, would appear to benefit, at lest indirectly, the appellant also, as Gajraj Singh could not have utilised such a loan for any

particular portion of the land for his exclusive benefit as the land had not yet been divided by metes and bounds. In these circumstances, even if a person had not the proof that the appellant had obtained the taqavi loan for himself, he was likely to draw the inference that the loan in the name of the brother and other family members was in fact for the benefit of the appellant also and therefore such a loan was as good as a loan to the appellant and for his benefit.

20. The question is not one of the truth of the statement that the appellant was the recipient of a large amount by way of taqavi loan, but of the absence of belief on the part of the respondent that the statement was true. In the background of the pamphleteering that had gone on, the controversy and the loan obtained by the appellant's brother and other relations, and in particular the allegations contained in Ex. R-12 which remained uncontradicted all throughout, and lastly, the fact that it was on account of the appellant's intervention that exemption from the levy and taqavi loans had become possible, it is impossible to rule out altogether a belief on the part of the respondent that the statement that the appellant had obtained monetary advantage was true. In any case, if the High Court on an appraisal of evidence before it arrived at such a conclusion, an interference at our hands with such a conclusion would require some compelling reasons. We have none such compelling reasons to warrant such an interference.

21. That being the position, we have to hold that the appellant failed to establish that the respondent did not believe the said statement to be true as required by Section 123 (4) of the Act. The appeal, therefore, fails and has to be dismissed. But since the statements complained of by the appellant have been proved to be factually untrue, we think it just that no order as to costs should be passed, and the parties should be left to bear their own costs.

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