

Bishwanath Rai

Vs

Sachhidanand Singh

Civil Appeal No. 233 of 1970

(V. Bhargava, J. M. Shelat JJ)

07.05.1971

JUDGMENT

BHARGAVA, J. -

1. This appeal under Section 116A of the Representation of the People Act, 1951 (hereinafter referred to as "the Act") has been filed by Bishwanath Rai whose election to the Legislative Assembly of Bihar from the Ramgarh Assembly Constituency 219 in the mid-term elections held in February, 1969, has been set aside on the ground of commission of corrupt practices. The Election Commission issued the Notification calling for election on January 1, 1969. The last date for filing nomination papers was January 8, 1969, the date of scrutiny was January 9, 1969; and the date of withdrawal of nomination papers was January 11, 1969. Polling took place on February 9, 1969 followed by the counting of the ballot papers and declaration of the result on February 11, 1969. Nine candidates, including the appellant, and the respondent Sachhidanand Singh who filed the election petition, filed their nomination papers. One candidate withdrew his candidature on January 11, 1969. On counting the ballot papers, the appellant was found to have received 21,143 votes, while the respondent-election-petitioner received 19,356 votes. The remaining candidates got very few votes ranging between 7 and 494. The election of the appellant was challenged by the respondent on various grounds, of which we need mention only two grounds which have been accepted by the High Court of Patna and on the basis of which the election of the appellant has been set aside. These grounds relate to commission of the corrupt practices of undue influence under Section 123(2) and of making appeal on the ground of caste under Section 123(3) of the Act.

2. The pleading in respect of the first ground of undue influence, which has been found against the appellant, relates to the incidents in two villages, Dumduma and Mukhraon. In the election petition, there was a general pleading that the appellant managed to use force in order to check the pleading that the appellant managed to use force in order to check the workers and innocent voters, who were supporting the candidature of the respondent, from going to the villages and the polling stations to canvass and cast their votes and he further managed to get bogus votes polled in his favour in place of those voters as well as other voters. It was further pleaded that the appellant, through his agents and workers, did not even allow the respondent and his voters and workers to move and meet other voters in several villages by using force, lathi, dhola and gherao, etc., and, in this way, the appellant, his workers of the respondent, but also restrained them from canvassing, working for the respondent, securing votes for him, or voting for him. In the particulars forming part of Schedule 2, this corrupt practice was alleged to have been committed in three villages, Kurhani, Dumduma and Mukhraon. However, no evidence was led during the trial in respect of village Kurhani. Evidence was led to the effect that the appellant and his workers with his consent restrained the workers of the respondent from proceeding to do canvassing in village Dumduma on January 30, 1969 and, for that

purpose, surrounded them, threatened them with lathis, and threw brickbats at them. Evidence was further led that on January 31, 1969, the workers of the appellant with his consent restrained and prevented the workers of the respondent from entering village Mukhraon for the purpose of canvassing in that village and threw brickbats at them. These are the two charges which have been held proved by the High Court against the appellant. These charges, according to the High Court, constitute the corrupt practice of undue influence committed by, or with the consent of, the appellant, so that the commission of this corrupt practice is one of the grounds on which the election of the appellant has been set aside.

3. The second ground of appeal on the ground of caste is based on the allegation that the appellant is Bhumidhar by caste and so is one Swami Bimlanand Saraswati alias Awadh Behari Summan. A large number of voters in this constituency also belong to the same caste and, even within the same caste, they belong particularly to the 'Bhawadhi' of Swamiji. Such voters are spread out in 15 to 20 villages and they are all known as 'Sarkarwar' family of Bhumidhar caste. Swamiji commands the highest respect in this community in these villages, because he works for the welfare of the members of this caste and also tries to attain unity and supremacy for the caste in politics. He has also been encouraging social and political organisations in the caste during the last five years or so. The allegation is that Swamiji, accompanied by the appellant and one Bhola Rai of the same caste went to a number of villages and appealed to individual voters there to vote for the appellant on the ground that he was a member of the caste, that he had, with great difficulty, obtained a ticket from the Central Board of the Congress Party, and that, if he was defeated on this occasion, the members of the caste would lose prestige and position in the various villages. He also wrote letters to some important members of the caste, including one Ram Chandra Sharma of village Harpur, who was working for the respondent. Ram Chandra Sharma was also Bhumidhar by caste and was not on good terms with the appellant. Swamiji appealed to him, on the ground of caste, to give up the disputes and support the appellant. This is the appeal on the ground of caste which has been held established by the High Court and forms the second ground for setting aside the election of the appellant. The High Court, in dealing with this case, in its judgment first dealt with the second ground relating to the appeal on the ground of caste which constituted the corrupt practice under Section 123(3) of the Act, and, consequently, we also proceed to deal with it before coming to the other ground relating to undue influence.

4. The High Court has held that the appeal by Swamiji on the ground of caste, in the manner described above, has been proved in respect of villages Harpur, Piprarh, Kanahari, Sujatpur, Chhitandihra and Kuchhila. This finding has been recorded by the High Court on the basis of the oral evidence of witnesses to whom or in whose presence the appeal was made by Swamiji in these various villages. Before dealing with this oral evidence, however, we consider it advisable to indicate our views in respect of letter Ex. I which purports to have been written by Swamiji to witness Ram Chandra Sharma. This letter has been proved by Ram Chandra Sharma to be in the hand-writing of Swamiji and he also proves that it was received by him in the beginning of January, 1969. On behalf of the appellant, two alternative pleas were taken in the written statement in respect of this letter. It was first contended that such a letter could not possibly have been written by Swamiji. In the alternative, it was pleaded that, if this letter was written by Swamiji, it must have been maneuvered in collusion between Ram Chandra Sharma and Swamiji. The letter having been proved by Ram Chandra Sharma, the burden lay on the appellant to prove circumstances which would induce the Court hold that either was not written by Swamiji or that it was written in collusion between him and Ram Chandra Sharma. No evidence, in order to establish these alternative pleas, has been produced on behalf of the appellant. Even the cross-examination of Ram Chandra Sharma does not cast any doubt on his evidence to the effect that this letter was written by

Swamiji and that it was received by him in the beginning of January, 1969.

5. There are circumstances which clearly indicate that the two pleas taken on behalf of the appellant to challenge this letter cannot have any force at all. The first point is that the two pleas are themselves inconsistent. The plea that, it was not written by Swamiji at, and alternative plea that, if it was written by him, it was in collusion between him and Ram Chandra Sharma cannot both stand together. Obviously, the two pleas have been taken merely on guess-work. The only evidence in proof of this letter was the statement of Ram Chandra Sharma and two questions were put to him. One question was that the letter was a forgery which he denied. The second question was that he had obtained this letter from Swamiji and this was also denied by him. It is significant to note that this letter is written on a postal inland letter and bears the postal stamp of January 2, 1969 as the date on which this letter was posted at Varanasi. There is not even a suggestion that this letter was postal stamp has in any way been procured by Ram Chandra Sharma or the respondent or any one else so as to maneuver a forgery of this letter. In view of this postal stamp, there can be no doubt that this letter must have been written some time on or before January 2, 1969 at which time there was no question of an election petition being filed, because the election had not yet been held. In fact, the Election Commissioner called upon the constituency to elect the candidate by the notification dated January 1, 1969 and even the date of nomination was a subsequent date, viz., January 8, 1969. There can be no justification for assuming that as early as January 2, 1969, before even the election process had started and before any one new who would be the successful candidate, a forgery of this letter would be committed by Ram Chandra Sharma with the object of using it subsequently against the appellant in case he was successful in the election. Similarly, the theory of collusion at that early stage is totally unbelievable. A forged letter or a letter in collusion could possibly have been obtained for the purpose of challenging the election only after the appellant had already succeeded in the election. He was declared successful of February 11, 1969. It cannot, therefore, be accepted that this letter was either forged or obtained by collusion before February 11, 1969. The genuineness of this letter cannot be doubted.

6. Of course, the manner in which the appellant could obviously challenge this letter was by examining Swamiji himself as a witness. Instead of examining Swamiji as a witness, the appellant adopted the procedure of making an application to the High Court to summon him and examine him as a court witness. That request was first put forward at a very early stage before examination of witnesses of parties had commenced. The Court rightly held that it was too early a stage for the Court to come to a finding whether the examination of Swamiji as a Court witness was necessary. Such an opinion could only be formed after evidence of parties was over. The appellant was, therefore, directed to move the application at the appropriate stage. Thereafter, evidence of both parties was recorded and the appellant did not examine Swamiji as his witness. He renewed the request for his examination as a Court witness after closing his evidence. The Court, in our opinion, quite correctly took the view that it was open to the appellant as well as the respondent to examine Swamiji as his witness and, when both of them failed to produced him as a witness, there is no reason why the Court should summon him as its own witness. Learned counsel appearing for the appellant argued before us that the appellant had sufficient justification for not examining Swamiji, because the appellant had made an allegation that he was in collusion with Ram Chandra Sharma and further because the request of the appellant to examine Swamiji as a Court witness was refused after the appellant had closed his evidence. Neither of the two reasons is adequate to explain the omission on the part of the appellant. A mere suggestion made as a guess-work that there was collusion between Swamiji and Ram Chandra Sharma can provide no justification for not examining him when no evidence at all had been tendered to prove that Swamiji and Ram Chandra Sharma were in any way great friends or that Ram Chandra Sharma had some influence on Swamiji as result

of which he could induce him to collude and write this letter at that early stage in January, 1969 in advance of the election. In fact, whatever evidence there is on the record points to closer association between the appellant and Swamiji than any association between Ram Chandra Sharma and Swamiji. So far as the second ground for non-examination is concerned, it was the appellant's own fault that he did not examine Swamiji at the earlier stage before closing his evidence. In any case, he had the alternative that, when the Court refused to examine Swamiji as a Court witness, he could have made a request to the Court to permit him to summon and examine Swamiji as his own witness; but no such request was made to the Court. In these circumstances, the fact that the appellant did not try to give the only possible evidence which he could to challenge the authenticity and genuineness of this letter justifies the conclusion that this letter was sent by Swamiji on January 2, 1969 to Ram Chandra Sharma as stated by the letter.

7. At one stage in its judgment, the High Court has stated that this letter was not relevant when Swamiji himself was not examined and that, if it had been relevant, the Court would have been inclined to entertain the request for examination of Swamiji as a Court witness. Great reliance was placed by learned counsel on this view expressed by the High Court in its judgment. It appears to us that the High Court was quite wrong in holding that this letter was not relevant. The contents of this letter were proved by the evidence of Ram Chandra Sharma who stated that he knew the handwriting of Swamiji with whom he had correspondence even earlier. His evidence, thus, was sufficient to prove the Swamiji wrote this letter to Ram Chandra Sharma, and that the statements contained in the letter were made by Swamiji himself. It is true that, in the absence of examination of Swamiji, the correctness of those statements cannot be held to be proved. Thus, the evidence of Ram Chandra Sharma proves the contents of the letter, but not the correctness of those contents. The letter was, therefore, admissible to the extent to which the fact that Swamiji wrote such a letter to Ram Chandra Sharma with its contents has bearing on the issues involved in this case. To that extent, the letter was relevant and admissible. However, we are not inclined to agree with the High Court that, if this letter is relevant and admissible, the Court should have examined Swamiji as its own witness. The relevance or admissibility was judged by the Court at the last stage of delivering the judgment. There was no justification for the appellant to wait for the judgment and not examine Swamiji as his own witness as held by us above. In the circumstances, this letter has to be taken into account to the extent just indicated by us above.

8. This letter, by itself, does not constitute any corrupt practice, because it does not contain any appeal to any voter or not to vote on the ground of caste. The appeal is to Ram Chandra Sharma to support the candidature of the appellant on the ground of caste and to ignore personal differences with the appellant in the interests of the unity and success of the members of the members of the caste. Such an appeal does not by itself constitute the corrupt practice under Section 123 (3) of the Act. However, this letter is of great value in assessing the evidence of witnesses who have been examined to prove the oral appeals on the ground of caste made by Swamiji in various villages. The oral appeals were made in villages Harpur, Piprarh and Kanahari on December 19, 1968, in villages Sujatpur and Chhitandihra on December 20, 1968 and in villages Kuchhila on January 22, 1969. This letter was sent by Swamiji on January 2, 1969, subsequent to the appeals made in the various villages, mentioned above, except the appeal made in village Kuchhila. The letter is addressed to Ram Chandra Sharma of village Harpur; and the oral evidence that an appeal was made to Ram Chandra Sharma by Swamiji on December 19, 1968 finds some support from this letter, as Swamiji in this letter refers to an earlier oral appeal made by him to Ram Chandra Sharma when Ram Chandra Sharma did not respond to that appeal. The fact that Swamiji referred to such earlier appeal gives support to the evidence of the witnesses who have been examined to prove that such an appeal was made in their presence. In respect of village Harpur, the witnesses examined are Ram Chandra

Sharma himself, Ramnath Singh Yadav, and Suraj Nath Rai. The criticism against Ram Chandra Sharma by learned counsel was that there has been long-standing political rivalry between him and the appellant and Ram Chandra Sharma resigned from the Congress on the very day on which the ticket was given by the Congress Party to the appellant to stand as its candidate from this constituency. He was a worker of the respondent. No doubt, Ram Chandra Sharma is an interested witness; but, on that account, his evidence cannot be totally disregarded. As we have said above, there is some support to his evidence provided by letter Ex. 1, Ramnath Singh Yadav is a resident of a neighbouring village Ismailpur and is a Mukhiya of Harpur Gram Panchayat. He says that he came to Ram Chandra Sharma to take his tractor on hire. There is nothing in the cross-examination of Ramnath Singh Yadav to show that he has any reason to be against the appellant or to favour the respondent. He is an independent witness. The third witness Suraj Nath Rai is, no doubt, related to Ram Chandra Sharma, being a distant nephew. There is, however, nothing else in his evidence which would justify our holding that he is not a reliable witness. The evidence of these witnesses has been accepted by the High Court even without the support provided to evidence by letter Ex. 1. No sufficient reasons have been brought to our notice which would justify our holding that the High Court was incorrect in believing these witnesses. That Court had the benefit of watching their demeanour in the witness-box. In these circumstances, we see no reason to disturb the finding recorded by the High Court that Swamiji did make an appeal on the ground of caste to Ram Chandra Sharma in village Harpur as stated by these witnesses. The petty contradictions that were pointed out to us by learned counsel in the evidence of these witness is cannot justify our setting aside the finding recorded by the High Court that these witnesses are reliable. The appellant's witnesses were not considered sufficient to disprove the case by the High Court and the reasons given appear to us to be correct. The appellant himself is a interested witness and the other witness Bhola Rai, who supports him by denying that they had gone with Swamiji to Harpur to make the appeal to Ram Chandra Sharma, is also highly interested witness. Their mere denials, without support from any other circumstance, could not be held to disprove the case which was supported by good evidence tendered on behalf of the respondent. Four other resident of Harpur were examined to say that no such visit of Swamiji took place on December 19, 1968. Their evidence was rightly considered insufficient by the High Court, because the visit could have taken place without the knowledge of those witnesses if those witnesses were not in the village on that day or, in the alternative, they did not see Swamiji, Bhola Rai and the appellant coming to the village, because they were in their houses, and these person only went to the houses of Ram Chandra Sharma. In these circumstances, the finding of commission of corrupt practice of making an appeal on the ground of caste in respect of village Harpur recorded by the High Court has to be upheld.

9. With regard to the appeals in the other villages Piprarh, Kanahari, Sujatpur and Chhitandihra, which were made on December 19 or 20, 1968, the finding recorded by the High Court again is that the evidence given on behalf of the respondent to prove that such appeals were made by Swamiji is sufficiently reliable to be believed. For village Piprarh, the two witnesses relied upon are Jadunandan Rai and Sarabjeet Rai. Neither of them has any direct enmity or differences with appellant. It is true that there was some litigation between these two witnesses and persons who are found to be workers of the appellant; but that can be no reason for holding that these witnesses had come to give false evidence against the appellant. In their cases also some contradictions were pointed out; but none of them are so serious as would induce us to hold that the High Court was incorrect in relying on their evidence. Similarly the witnesses examined to prove the caste appeal made in village Kanahari are Bindhyachal Rai, Deonandan Singh and Manrakhan Rai. Bindhyachal Rai was no doubt a polling agent of the respondent; but the other two persons Deonandan Singh and Manrakhan Rai are not shown to have any connection with the respondent or to be hostile to the

appellant. The criticism against Manrakhan Rai's evidence was that his name was put forward as a witness on behalf of the respondent at a very late stage after the other two witnesses Bindhyachal Rai and Deonandan Singh had been examined. That, however, does not show that he is a witness subsequently procured by the respondent for the case. The explanation for his name being mentioned at a late stage is that the respondent came to know that he was present at the time of the appeal only when his name was mentioned by the other witnesses during their evidence in this case. He could not naturally summon him earlier. The witnesses in respect of Sujatpur are Sarabjeet Singh and Kamla Rai. These two witnesses were both polling agents of the respondent, but no other significant discrepancy was found in their evidence. Kamla Rai in fact was asked by Swamiji himself to contact Sarabjeet Singh as Swamiji wanted to meet the latter and it was in that connection that Kamla Rai came to Sarabjit Singh's house and then remained present until Swamiji came and made the appeal to Sarabjit Singh. Kamla Rai obliged Swamiji because he is a follower of the math which is now presided over by Swamiji. In respect of village Chhitandihra, the two witnesses examined are Raj Narain Rai and Nathuni Rai. Though Raj Narain Rai was a polling agent of the respondent and may, thus, be slightly interested in him Nathuni Rai at least is an independent witness. He is also one of the persons whose name came to the knowledge of the respondent only when Raj Narain Rai in his evidence mentioned his presence at the time of the caste appeal and, consequently, he had to be summoned at that late stage. All these witnesses in respect of the caste appeal in various villages have been believed by the High Court. Nothing of importance has been brought to our notice which would justify our holding that these witnesses are unreliable and differing from the assessment of their evidence made by the High Court. The appellant's evidence in respect of these caste appeals consists primarily of the statements of the appellants himself and Bhola Rai who are both highly interested and whose evidence did not impress the High Court. The other witnesses examined could not competently disprove the caste appeals, because there was not guarantee that they were present at the time when Swamiji actually made the caste appeals. Further, we have the fact that an appeal on the ground of caste in favour of the appellant was actually made by Swamiji in writing to Ram Chandra Sharma, though for a slightly different purpose, viz., that persuading Ram Chandra Sharma not to work in his favour. In the background of this letter of Swamiji, about the genuineness of which we are fully satisfied, we consider that the High Court was right in relying on the evidence of the witnesses and in holding against the appellant that caste appeals were made in these villages in the presence of the appellant by Swamiji in order to persuade member of Bhumidhar caste to vote for the appellant.

10. The appeal subsequent to the letter, in respect of which evidence has been given, relates to villages Kuchhila. For the appeal in this village, six witnesses have been examined. The first witness Ramrup Singh merely proves the fact that Swamiji visited the house of Lal Bahadur Rai in the company of the appellant and Bhola Rai. He was not present when the appeal was made by Swamiji to Lal Bahadur Rai and others to vote in favour of the appellant, because he was a Bhumidhar Brahmin. Another witness Abbas Mian, who is totally an independent witness, has also proved that he was asked to call some persons whom Swamiji wanted to meet and to whom, according to the evidence of other witnesses, the appeal on the ground of caste was made. The evidence of this is very important, because he has no reason to be antagonist to the appellant or to favour the respondent. He was a mason who belonged to a different village and was employed on construction work by Lalmani Rai. Lalmani Rai has himself been examined and has proved the actual appeal made by Swamiji. His evidence is supported by three other witnesses, Radha Mohan Rai, Digeshwar Rai and Lal Bahadur Rai. It is true that Lal Bahadur Rai was a strong supporter of the respondent and a worker for him and he had enmity with the appellant. Digeshwar Rai and Radha Mohan Rai were also parties to proceedings under Section 107 of the Code of Criminal Procedure in which the

appears to be a fairly independent witness. The only thing that was urged against him was that he is a nephew of Lal Bahadur Rai. He is a distant nephew and there is nothing to show that he has come to give evidence under the influence of Lal Bahadur Rai. In any case, the High Court has relied on the evidence of all these witnesses which was justified, as we have stated earlier, by the circumstance that letter Ex. 1 proves beyond doubt that Swamiji was a support of the appellant, wielded influence amongst the Bhumidhar Brahmins and even made an appeal in writing to Ram Chandra Sharma on that ground to support the appellant the give up his support to the respondent. Consequently, we hold that finding of the High Court that Swami Bimlaland Saraswati made appeals to various persons in several villages to vote for the appellant on the ground of being members of the Bhumidhar Brahmin caste in the presence of the appellant is correct so that the appellant is guilty of commission of the corrupt practice falling under the provisions of Section 123 (3) of the Act and, on this ground at least, the election of the appellant has been rightly set aside.

11. So far as the ground of undue influence is concerned, learned counsel appearing for the appellant challenged the decision of the High Court on two alternative grounds. One ground was that the finding recorded by the High Court was to the effect that the workers of the respondent were prevented from going to do canvassing on behalf of the respondent and such interference with the workers does not amount to undue influence as defined in Section 123(2) of the read with the definition of 'electoral right' contained in Section 79(d) of the Act. The second argument was that, in judging the evidence of witnesses of the two parties on this issue, the High Court has applied different standards and, by so doing, has disbelieved the evidence of witnesses examined on behalf of the appellant on the basis of circumstances which have been ignored when believing the evidence of respondent's witnesses. It, however, appears to us that it is unnecessary to go into these aspects and to deal with the question whether any corrupt practice of undue influence was committed or not, because the finding we have recorded in regard to the commission of corrupt practice on the ground of caste under Section 123(3) of the Act is sufficient to dispose of this appeal which has to be dismissed.

12. As a result, the appeal is dismissed with costs.

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